REPORT OF THE DIRECTOR-GENERAL

YOUR VOICE AT WORK

Global report
under the Follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work

INTERNATIONAL LABOUR CONFERENCE
88th Session 2000

Report I (B)

INTERNATIONAL LABOUR OFFICE
GENEVA

This Report may also be consulted on the ILO Internet site (http://www.ilo.org/voice@work).

ISBN 92-2-111504-6
ISSN 0074-6681

First published 2000

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers. Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address.

Printed in Switzerland ATA

Contents

Executive summary VII

Introduction 1

Part I. A dynamic global picture 5

1. Collective representation in the new world of work 7
2. The global picture 25

Part II. Assessing the effectiveness of the assistance provided by the ILO 39

3. Your voice at work and the role of the ILO 41

Part III. Determining priorities for technical cooperation 57

4. Building on the Declaration 59

Annexes

1. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up 69
2. Follow-up to the Declaration (flow diagram) Encouraging efforts to respect fundamental principles and rights at work 75
3. Table of ratifications of ILO Conventions Nos. 87 and 98 and annual reports submitted under the Declaration follow-up 77
4. Conventions Nos. 87 and 98 85

Executive summary – *Your voice at work*

Introduction

Your voice at work underscores the crucial role of freedom of association and the effective right to collective bargaining in achieving decent work for all in today's globalizing world. It outlines the challenges and opportunities that accelerated structural and technological change has brought in its wake and examines trends – some of them quite disturbing – in relation to the respect shown for these principles and rights around the globe. The Report regrets that violations are still occurring and stresses how good governance of the labour market based on respect for these principles and rights can contribute to stable economic, social and political development.

After assessing the effectiveness of ILO assistance in this area, *Your voice at work* draws lessons from this experience to enable the ILO and other institutions to incorporate better the exercise of freedom of association in strategies for equity and poverty reduction. The Report points to priorities for technical cooperation aimed at reinforcing these individual and collective principles and rights. These include:

- *closing the representational gap for workers and employers;*
- *encouraging agreed methods of bargaining and cooperation as facilitators and shapers of change;*
- *reinforcing policies that underpin respect for freedom of association and collective bargaining as part of the package that makes up the 1998* ***ILO Declaration on Fundamental Principles and Rights at Work*** *– an important new promotional tool.*

As a result of a growing awareness of the need for a social pillar in the global economy, consensus has emerged around a set of principles and rights at work – the first category of which is freedom of association and the effective recognition of the right to collective bargaining (the remaining three are the elimination of forced labour, child labour and discrimination in employment and occupation). *Your voice at work* is the first in a series of Global Reports which are designed to serve as a basis for assessing the effectiveness of the assistance provided by the Organization and for determining priorities in the form of action plans for technical cooperation. The Global Report is one aspect of reporting under the Follow-up to the ILO

Declaration – the other being the annual review for States that have not yet ratified all the fundamental Conventions. The aim of the Follow-up is to encourage the efforts made by the member States of the Organization to *promote* the fundamental principles and rights in the Declaration, as based on the Constitution of the ILO and reaffirmed at the World Summit for Social Development in Copenhagen and the Ministerial Conference of the World Trade Organization in Singapore.

A dynamic global picture

The globalizing economy – characterized by the opening of world markets, heightened competition, accelerated technological and structural change as well as the cyber-revolution – is having a dramatic impact on work. But the effects are spread unevenly, and the simultaneous inclusion and exclusion of people, regions and economic sectors present some of the greatest challenges. The informal economy is exploding, leaving many without any say in their working conditions. These factors are leading to *a widening representational gap in the world of work.*

Whilst trade union membership remains significant in many large workplaces, it has decreased overall in the last decade. Women in particular often remain deprived of a representational avenue for expressing their voice at work. Given the growing diversity of company interests, employers' organizations are also challenged by globalization. Although the business community has embraced the principles of freedom of association and collective bargaining in the Declaration and in the United Nations-sponsored Global Compact, the contribution that worker participation and strong labour market institutions might make towards increasing productivity and added value is not always fully appreciated.

Attaining the ILO's goal of decent work for all will only be possible if people can have a say in how this goal is to be achieved and have the right to build institutions that represent their interests; hence the call for greater *"representational security"* – the exercise of "voice at work" supported by well-functioning institutions – as a basis for sustainable growth. *Representational security facilitates local responses to a globalized economy; in turn, the collective institutions that grant representational security are contingent upon respect for freedom of association.*

These principles and rights – and above all respect for them – are good for labour, since they constitute the cornerstone of representational security in the formal and informal economies. They are good for business, as they unlock the door to sound human resources policy and open up the high road to competing in the global market. And they are good for governments, because they pave the way for collective action that can aid economic growth and poverty eradication. Having a voice at work helps fill information gaps and lays the foundation for trust and cooperation in the management of change – a vital function of social dialogue at the national, sectoral and firm levels. Civil society groups also depend upon freedom of association and recognition of the legitimacy of collective action to carry out their own work effectively.

Yet the value of this category of principles and rights at work is not always as clearly understood as the struggle against the worst forms of child labour. Alarmingly, freedom of association and the effective right to collective bargaining are not being universally respected or extended to everyone. Yet these principles and rights can help usher in positive change in an insecure, globalized world.

Your voice at work draws upon information from the ILO's long-established machinery for handling complaints relating to freedom of association and monitoring ratified fundamental Conventions, as well as upon the new information available from reporting under the promotional Declaration Follow-up; and the picture it paints is often disturbing. Intimidation, threats and sometimes even mur-

der still await many workers who attempt to organize in a number of countries around the world. The Report identifies where these and other serious problems persist in spite of the universal resolve to relegate such action to the past.

The Report stresses the crucial link between an overall guarantee of civil liberties and respect for trade union rights. And while the number of state-monopoly trade unions has declined in recent years in the wake of democratization on all continents, they still exist in several countries.

Also troubling is the number of workers excluded from the mantle of freedom of association and collective representation in many countries. In much of the world, agricultural, domestic and migrant workers simply cannot exercise these basic rights. In the public service, collective bargaining and sometimes freedom of association remain out of reach for many. *Your voice at work* notes with concern the situation of workers in export processing zones (EPZs), which sometimes attempt to attract foreign investment by precluding the exercise of these rights. At the same time, fortunately, the Report records the many recent instances of progress in respect for freedom of association.

Collective bargaining is the expression in practice of freedom of association in the world of work. Once again, however, substantial restrictions on the exercise of collective bargaining exist in developing and developed countries. *Your voice at work* points out the importance of governmental support for – rather than interference in – collective bargaining, together with the institutional infrastructure required to make it work. It highlights some positive practical steps governments have taken to strengthen collective bargaining and institutions for the prevention and resolution of disputes.

Assessing the effectiveness of the assistance provided by the ILO

The ILO has had considerable success in helping countries achieve respect for these principles and rights at work in countries that have demonstrated the political will to embrace them. In the ILO's experience, this show of will begins with increased respect for civil liberties and human rights. Assistance from the ILO has ranged from advising ministries and parliaments on labour law, to strengthening the capacity of governments to implement and monitor that law, to heightening the ability of governments and employers' and workers' organizations to participate in social dialogue and collective bargaining. This tripartite involvement, often involving consultations with civil society, gives the ILO a distinct advantage in supporting democratic change.

Using work carried out during the past decade in Indonesia, South Africa, Poland and Costa Rica as examples, *Your voice at work* illustrates how the ILO, working with partners, has contributed considerably towards ensuring that respect for freedom of association and the effective right to collective bargaining formed an integral part of the progress achieved by these countries. The lessons learned suggest the positive synergy between national political will and the provision of ILO technical expertise and support across a broad range of circumstances and economic parameters. Where that political will has not yet emerged, the ILO can marshal political pressure through its tripartite bodies and constituents to help bring about positive change over time.

Determining priorities for technical cooperation

Your voice at work charts several paths forward for future ILO action. The Declaration is a tool that places responsibility on the Organization, and on its constituents, to support ILO member States' attempts to translate fundamental principles and rights at work into practice through technical cooperation activi-

ties. The first steps in this direction have already been taken. In addition, advocacy, peer pressure and ever stronger encouragement for change can have a real impact on state behaviour.

The Report has identified the importance of involving a range of actors in achieving respect for freedom of association and collective bargaining. It has revealed some important knowledge gaps in identifying best practices in the implementation of these fundamental principles and rights for all women and men. Greater investigation is needed to identify the link between their respect in a variety of contexts and improved economic performance, equitable development and poverty reduction, as well as their gender dimensions. And, clearly, advocacy efforts for this category of principles and rights need to be intensified.

Your voice at work concludes with indications of possible priorities for technical cooperation to support the promotion of respect for freedom of association and the effective right to collective bargaining. The Report points to three interrelated priorities:

- *ensuring that all workers can form and join a trade union of their choice without fear of intimidation or reprisal, and that employers are free to form and join independent associations;*
- *encouraging an open and constructive attitude by private business and public employers to the freely chosen representation of workers and the development of agreed methods of bargaining and complementary forms of cooperation concerning terms and conditions of work;*
- *promoting the recognition by public authorities that the good governance of the labour market, based on respect for fundamental principles and rights at work, makes a major contribution to stable economic, political and social development in the context of international economic integration, the expansion of democracy and the fight against poverty.*

Respect for these principles and rights at work provides a critical social dimension to the global economy and its governance. The ILO Declaration offers a fresh, promotional approach for achieving this on a universal basis.

* * *

The first in a series of Global Reports under the Follow-up to the Declaration, *Your voice at work* contains annexes that set out:

- the text of the ILO Declaration on Fundamental Principles and Rights at Work;
- a diagram illustrating the Follow-up mechanism;
- the status of ratification for the fundamental ILO Conventions on freedom of association and collective bargaining (Nos. 87 and 98) and the rate of reporting by non-ratifying governments under the Declaration Follow-up; and
- the substantive provisions of Conventions Nos. 87 and 98.

The Report will be followed by other Global Reports on the elimination of all forms of forced or compulsory labour (2001), the abolition of child labour (2002), and the elimination of discrimination in employment and occupation (2003) – the three other categories covered by the ILO Declaration on Fundamental Principles and Rights at Work.

For more information see:

Declaration website: http://www.ilo.org/declaration/

Your voice at work: http://www.ilo.org/voice@work

Introduction

Enhancing people's security

1. The benefits of globalization as it is currently unfolding are not reaching enough people. Insecurity and the fear of either failing to rise on the social scale or sliding down it breed discontent. People are concerned that governments, business and international organizations do not really hear their voice. Banding together in organizations has always been a way for people to enhance their security, whether at their workplace or within their community or nation. Freedom of association is essential for this and the right to collective bargaining makes freedom of association effective in the world of work.

Fundamental rights in a changing world

2. As a result of a growing awareness of the need for a social pillar in the global economy, consensus has emerged in the international community around a set of fundamental principles and rights at work. These are: freedom of association and the effective recognition of the right to collective bargaining; and the elimination of forced labour, child labour and discrimination in employment and occupation. All member States of the International Labour Organization have committed themselves to respect, promote and realize these principles in the *Declaration on Fundamental Principles and Rights at Work and its Follow-up*.[1] The overall purpose of the Follow-up to the Declaration is *to encourage the efforts* made by the member States of the Organization to *promote the fundamental principles and rights* enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed at the World Summit for Social Development in Copenhagen and the Ministerial Conference of the World Trade Organization (WTO) in Singapore.[2] The Declaration and its Follow-up highlight *technical cooperation* as the central means for encouraging such efforts by member States around the world. The promotional nature of the Follow-up to the Declaration is intended to be complementary to but distinct from the ILO supervisory mechanisms.[3]

A dynamic global picture

3. *Your voice at work* is the first in a series of reports under the Follow-up to the Declaration which will cover, each year, one of the four categories of fundamental

[1] *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998; see Annex 1 for the full text of the Declaration.

[2] See United Nations: *Report of the World Summit for Social Development* (New York, doc. A/CONF.166/9, 19 Apr. 1995), Commitment 3, pp. 14 et. seq.; World Trade Organization, *Singapore Ministerial Declaration* (doc. WT/MIN (96) DEC, 18 Dec. 1996), para. 4. For a fuller historical account of the drafting of the Declaration and its follow-up, see: *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Report VII, International Labour Conference, 86th Session, Geneva, 1998, and the various documents relating to the Declaration on the ILO's website (http://www.ilo.org).

[3] For a description of these mechanisms, see ILO: *Handbook of procedures relating to international labour Conventions and Recommendations* (Geneva, 1998).

principles and rights in turn. The theme of this first Global Report is freedom of association and the effective recognition of the right to collective bargaining. *Your voice at work* gives a perspective of what is happening in countries that have ratified ILO Conventions Nos. 87 and 98[4] as well as those that have not yet done so. This category of principles and rights is the first to be considered because it often holds the key to the realization of fundamental principles and rights in the other three categories. Yet it is often considered to be the most contentious, and respect for these principles does not always have the same public commitment or identification as, for example, the struggle against child labour.

Assessing the effectiveness of the assistance provided by the ILO

4. The format for the first Global Report is designed to fulfil the requirements laid down in the Annex to the Declaration, in the context of a Follow-up that is to be promotional, meaningful and effective. It is one of the two major reports under the Follow-up to the Declaration (the other is the compilation of annual reports from governments accompanied by an introduction;[5] see flow chart of the procedure in Annex 2) and it is intended to be action-oriented. One of the objectives of the Global Report is to assess the extent to which the ILO, through its different activities and links with other institutions, can effectively help the social partners to implement and realize the four categories of fundamental principles and rights at work.

Determining priorities for the following period

5. The Global Report is also intended to help in the identification of the priorities for action. By the time of the next Global Report on freedom of association and the effective recognition of the right to collective bargaining, we should be looking back over a four-year period in which measurable progress has been made in the realization of these principles and rights.

Work and democracy

6. This Report is entitled *Your voice at work* to highlight that in an era in which democracy, as Amartya Sen has put it, is becoming the default system of governance all over the world,[6] the exercise of rights cannot be stopped at the factory, farm or office gate, or lost in cyberspace by the advent of teleworking. It is based on information acquired through the Organization's established procedures and lessons gleaned from the experience of the ILO's work with its constituents all over the world.

Freedom of association and collective bargaining rights – key to decent work

7. Translating the ILO's goal of decent work for all women and men into reality is only possible when the people directly concerned have a voice in defining what the concept of decent work actually means for them and how to achieve it.[7] Democracy together with the market produces institutions reflecting differing needs and aspirations, traditions and innovations. This diversity in practice is consistent with respect for key universal principles such as freedom of association. Indeed, in a global system that requires coherent and integrated solutions to common problems, the principles and rights expressed in the Declaration provide one of the social pillars upon which democracy is built *and* which give markets that critical social dimension.

Contents of the Report

8. The first chapter of the Report presents an overview of the challenges and opportunities that rapid change and globalization present in the world of work

[4] Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Substantive provisions of these two Conventions can be found in Annex 4.

[5] The first compilation of annual reports and an introduction to them by the ILO Declaration Expert-Advisers appear in Governing Body docs. 277/3/1 and 277/3/2, 277th Session, Geneva, Mar. 2000.

[6] A. Sen: "Democracy as a universal value", in *Journal of Democracy* (Baltimore, Johns Hopkins University Press) July 1999, http://jhupress.jhu.edu/demo/jod/10.3sen.html

[7] See ILO: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999.

and their implications for freedom of association and collective bargaining. Chapter 2 summarizes major trends in respect of these principles and rights. Chapter 3 assesses ILO assistance to date in promoting these principles and rights with a view to distinguishing the most important lessons for the future. The concluding Chapter 4 suggests a framework for ILO action with its constituents and other international organizations.

Priorities for the future

9. This Report concludes that there are three interrelated priorities that should guide the promotional work by the ILO:

- ensuring that all workers can form and join a trade union of their choice without fear of intimidation or reprisal and that employers are free to form and join independent associations;
- encouraging an open and constructive attitude by private business and public employers to the freely chosen representation of workers and the development of agreed methods of bargaining and complementary forms of cooperation concerning terms and conditions of work;
- recognition by public authorities that the good governance of the labour market based on respect for fundamental principles and rights at work makes a major contribution to stable economic, political and social development in the context of international economic integration, the enlargement of democracy and the fight against poverty.

The role of the ILO in a new architecture of global governance

10. The goals highlighted in this Report constitute a realistic ambition: to guide governments, employers and trade unions as well as the whole of civil society and international organizations through a period of major economic, political and social change. The world of work will look very different ten, 20 or 50 years from now. Indeed, it will look different in 2004 when the next Global Report on freedom of association and collective bargaining is presented. How this world changes and whether a system will be created that allows the elimination of poverty and unemployment together with the realization of fundamental principles and rights at work will continue to be determined over the next few years. The ILO Declaration makes an important contribution to a new architecture of governance of globalization. Under circumstances of intensified competition, the productive potential of that system can be seriously enhanced by listening to the voice of women and men at work.

Part I: A dynamic global picture

1. Collective representation in the new world of work

The new global context

11. The opening of world markets, technological and structural change and the dismantling of a system of opposing political and economic blocs are having a dramatic impact on the world of work. In a nearly universal market economy, the pace of economic activity is faster, contractual relationships start and terminate at short notice, and competition is intensified. The rate and scale of this change vary considerably both between and within countries and economic sectors, but everywhere it has a major impact on workplace relations and the manner in which the principles of freedom of association and the right to collective bargaining are realized. This chapter reviews the major features of this process and how it affects workers and their unions, employers and their associations and the role of the State in the (formal and informal) labour market. It highlights trends visible at the end of the twentieth century in order to identify issues that warrant the attention of public policy-makers in general, and the ILO's tripartite constituents in particular.

Globalization and the world of work

Globalization increases intensity of competition

12. Globalization has captured the attention of governments, multilateral institutions and policy-makers everywhere. The term means many things to many people, but for the purposes of this Report it refers to the *combination* of opening and integrating markets, technological innovation, and political reform. The first component of globalization is the heightening of competition, the result of the liberalization of trade and financial regimes and integration of markets. Over the last 30 years, international trade and flows of foreign direct investment have grown faster than world output (see figure 1.1). The expansion of trade in goods and services, capital flows, and shrinking transport and communication costs force employers, unions and governments increasingly to take account of competition from other countries.

Figure 1.1. Growth in world output, exports and foreign direct investment (FDI) outflows (percentage)

	1990-1995*	1996	1997	1998
World output	1.9	3.3	3.3	2.0**
World exports	6	5.5	10.5	3.5
FDI outflows	15.9	5.9	25.1	36.6

*Annual average
** Estimated

Sources: UNCTAD: *World Investment Report, 1999* (Geneva, 1999).
UNCTAD: *Trade and Development Report, 1999* (Geneva, 1999).

Impact of information revolution

13. The second component of globalization is rapid change in the area of information technology. The information technology revolution has created a global market for investment finance, vastly increased the pace and scale of information exchange, and dramatically altered production, distribution and management processes and structures. Workplaces are experiencing the impact of machines that can perform what used to be the uniquely human skill of processing information. For example, by using technology to reduce the costs of ordering, shipping and inventory-holding, United States wholesalers have boosted output by 20 per cent without increasing employment.[1]

New political dynamics

14. Symbolized by the fall of the Berlin Wall, the third component of globalization is the wave of democratic political reform and the eclipse of non- and anti-market systems of economic organization associated with state-planned economies. Most countries have opened up to a significant degree to international competition. The ideological confrontation that marked the twentieth century has given way to debate about how best to manage the market and enlarge respect for basic human rights.

Multinationals lead the process of globalization

15. Lowering economic barriers between nations opens up enormous new possibilities for multinational companies and the growing number of national businesses linked up with them. Parent firms and foreign affiliates of multinational enterprises (MNEs) now account for 25 per cent of global output. Foreign direct investment by multinationals has gained increasing significance as a means to deliver goods and services directly to foreign markets. The value of foreign affiliate sales (of goods and services) in domestic and international markets amounted to US$11 trillion in 1998, compared to US$7 trillion of world exports for the same year. Whilst the main impact on employment is on national/local companies that are subcontractors or otherwise linked to MNEs, total direct employment of foreign employees has been increasing.[2] Multinationals lead the way in disseminating new techniques of management and new technologies for production. In many sectors, they are the driving force of a global chain of production, linking companies in the developing world to consumers in industrialized countries.

[1] See ILO: Sectoral Activities Programme (SECTOR): Commerce (http://www.ilo.org/public/english/dialogue/sector/sectors/commerce.htm)

[2] UNCTAD: *World Investment Report* (Part II): *Foreign Direct Investment and the Challenge of Development* (New York and Geneva, United Nations, 1999) and ILO: *Follow-up on and promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, Governing Body doc. 268/MNE/1/1.

Globalization has produced benefits but also carried social costs

16. These developments in trade, capital flows and production processes have delivered significant social and economic benefits. For example, the growth of world trade has stimulated output and employment growth. Increased competition as a result of the lowering of trade barriers has spurred innovation and widened consumer choice. However, the increased global integration of economies has also brought a number of social costs in its wake. The economic adjustment process accompanying financial and trade liberalization has resulted in a higher degree of employment volatility and an increase in insecurity and inequality.[3]

Differential impact of globalization provokes tensions

17. Globalization is controversial because of its differential impact on countries, communities and individuals. The global economy does not benefit every person or region of the world. Nor has the technological revolution touched every part of the globe.[4] Many economies are increasingly integrating into a global economy, but others are becoming marginalized, and global inequalities are growing.[5] *This simultaneous inclusion and exclusion of people, regions and economic sectors is a significant characteristic of globalization and presents some of its greatest challenges.*

Impact of globalization on the exercise of freedom of association and collective bargaining rights

National systems of representation under pressure

18. Workers' and employers' organizations, and the laws and institutions that set the framework for their functioning, were originally developed when firms sold most of their output in a national market. Social and market forces operated within the same geographical and political boundaries. This is no longer the case. Capital has acquired the option to exit and MNEs are significant employers, directly or indirectly, in many parts of the world. National collective bargaining has increasingly to take account of developments in other countries. Long-established practices and deeply felt values are being tested against the criteria of survival in a fiercely competitive global market. It is feared that these developments will place downward pressure on freedom of association and collective bargaining rights.

Competition between labour market systems erodes freedom of association

19. Key features of the labour market and its regulations are relevant for the assessment of the advantages of a country within the global market. Regulatory, normative (e.g., by collective agreement) and institutional forms of protection and labour market security are sometimes perceived as "costs" as well as "impediments" to flexibility and competitiveness. This perception can be either in the eyes of the potential investor and customer from abroad – or, as is more often the case, in the eyes of the authorities who wish to gain investment and orders. To attract foreign investors, export processing zones in some parts of the world effectively restrict freedom of association. However, there may be a potentially disastrous mismatch between the different perceptions. Whilst local authorities may believe that very low wages and no labour regulation will attract business, the investor may well be ready to accept higher costs if there is political stability, infrastructure, domestic demand for the produced goods and services, and well-functioning industrial relations.

---

[3] See ILO: *Final report on the social impact of globalization*, Governing Body doc. 276/WP/SDL/1.

[4] Castells makes the point that the technological revolution has not been all-encompassing with a "digital gap" having developed both within and between countries. See M. Castells: *Information technology, globalization and social development* (Geneva, United Nations Research Institute for Social Development (UNRISD), 1999).

[5] An analysis of long-term trends in world income distribution (between countries) shows that the distance between the richest and poorest countries grew from 35 to 1 in 1959 to 72 to 1 in 1992. See: UNDP: *Human Development Report* (Geneva, 1999).

Internationalization of production impacting on collective bargaining

20. The internationalization of production is impacting directly on the collective bargaining environment. Considerable attention has been given to the multiple exit options available to mobile capital in the globalized economy. Not only can the actual transfer of an undertaking from one country to another close down avenues of collective bargaining, the mere threat of doing so can significantly change power relations at the bargaining table. In the same vein, workers bargaining at national level may find that they have inadequate access to information about the international financial position and corporate plans of the employer with whom they are negotiating, or that the employer representative has no real decision-making power. In such circumstances, the real content and meaning of collective bargaining can be seriously reduced. One view is that the effective realization of the right to collective bargaining requires that it, too, should be conducted at the international level. However, despite the trend toward more consultation and information arrangements in the context of regional integration or with respect to specific multinational enterprises, there have been no significant advances in this direction.

Segmentation of labour markets has undermined the exercise of these rights

21. The restructuring of production by firms so that they can concentrate on core activities and the wide-scale privatization of state enterprises have reduced the size of production units and led to the outsourcing of work previously done by in-house service staff. Modifications in work organization and technology, induced by the search for more flexible and responsive work methods, have resulted in more contract and part-time work. These factors are impacting on traditional employment relations and the exercise of freedom of association and collective bargaining rights inherent in them. Should workers in smaller units choose to join a trade union they are at greater risk of intimidation than those in larger enterprises. Flexible work patterns make it more difficult to organize workers for collective representation. Subcontracting arrangements are causing the employment relationship increasingly to resemble a commercial relationship, making it difficult to identify the real employer for the purposes of collective bargaining.

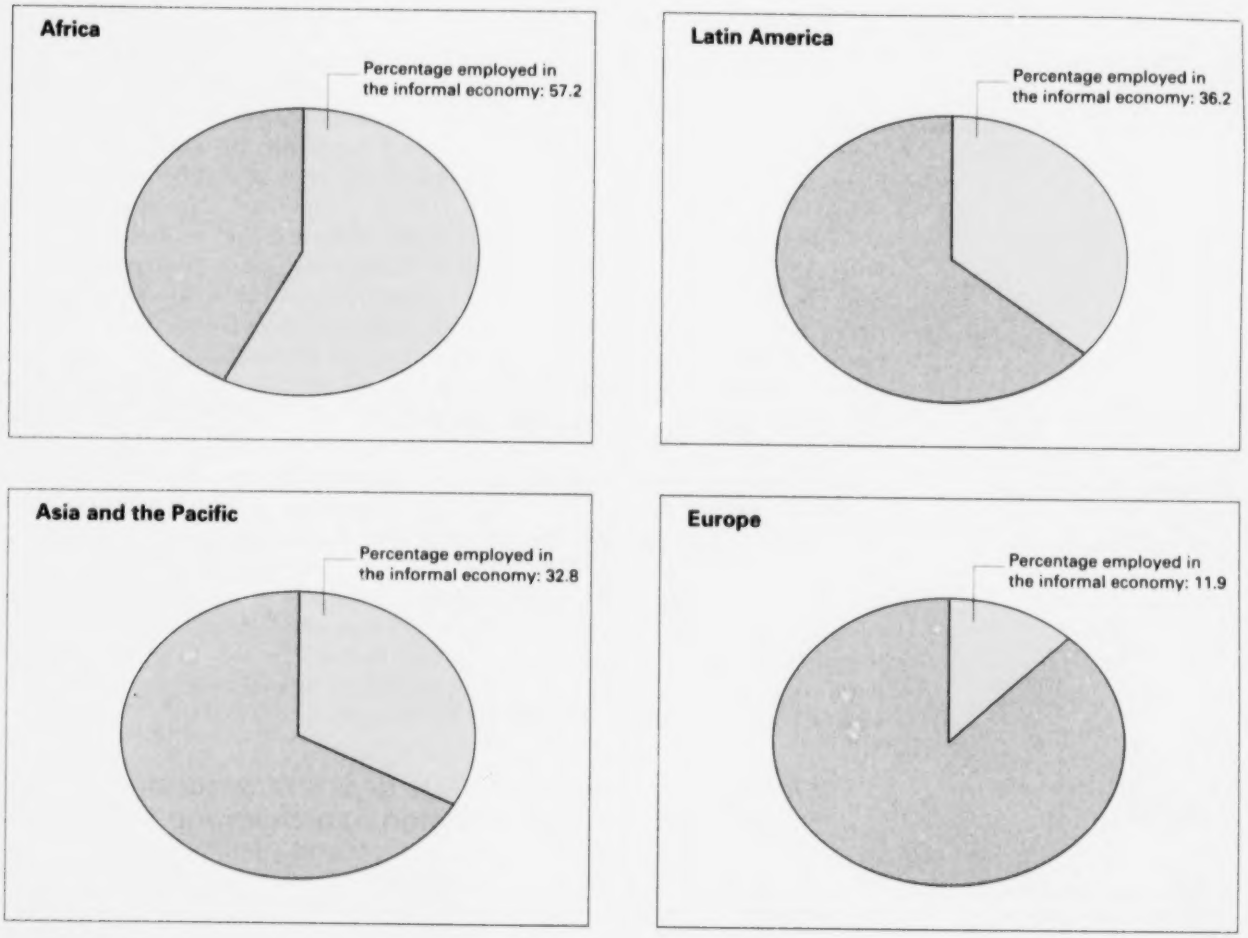
Bulk of new entrants to the workforce in the informal economy yet low levels of organization

22. Perhaps more indirectly related to the process of globalization is the increasing economic significance of the informal economy[6] as a source of employment in most developing countries in recent years (see figure 1.2). The ILO estimates that in Latin America, between 1990 and 1994, 80 per cent of new jobs created were in the informal economy. In Africa, this sector was expected to generate 93 per cent of additional jobs in the 1990s.[7] Workers in the informal economy often experience the most extreme insecurities and little or no protection as labour legislation can seldom be effectively applied to them. Where some form of representation of their collective interests is manifestly necessary, traditional trade union presence is very weak. And yet collective organization is an essential tool to escape poverty.

[6] The notion of the informal economy includes those small-scale income-generating activities which take place outside the official regulatory framework and typically utilize a low level of capital, technology and skills, while providing low incomes and unstable employment. This excludes "underground" activities that may be profitable, but deliberately evade taxes and regulations. The 1993 International Conference of Labour Statisticians adopted a resolution defining the informal sector as consisting of household enterprises, which include own-account workers (without paid employees on a permanent basis) and employers of informal enterprises (employing one or more on a continuous basis). See ILO: *Key Indicators of the Labour Market* (Geneva, 1999).

[7] M. Tomei: *Freedom of association, collective bargaining and informalization of employment – Some issues* (Geneva, ILO, 1999).

Figure 1.2. Employment in the urban informal economy


Africa
Percentage employed in the informal economy: 57.2
Latin America
Percentage employed in the informal economy: 36.2
Asia and the Pacific
Percentage employed in the informal economy: 32.8
Europe
Percentage employed in the informal economy: 11.9

North America: Data not available

Source: ILO: *Key Indicators of the Labour Market* (Geneva, 1999).

Gender bias to trends

23. The impact of changes in the labour market on the exercise of freedom of association and collective bargaining rights has an inherent gender dimension. The majority of workers in subcontracted, temporary or casual work, part-time work and informal occupations are women. Even in the formal export-oriented manufacturing sector, women tend to be concentrated in the lower occupational ranks with the least secure contractual arrangements. More women than men are in unorganized and unprotected jobs which lack security of tenure. This perpetuates poverty for families.

Union membership hit

24. These trends have a direct impact on the collective representation of workers. Whilst union membership generally remains significant in large workplaces, it has decreased in almost all parts of the world in the last decade.[8] The relevance of collective representation is not always obvious when workplaces are small or in activities where there is little experience of collective organization and representation of interests. In addition, despite the spread of democracy throughout the world, there is

[8] See ILO: *World Labour Report*, 1997-98 (Geneva, 1997).

still a considerable degree of unease with, and even outright hostility towards, trade unions. A fear of the reaction of employers or public authorities can make working women and men hesitant about joining together or signing with a union.

Challenges for employer coordination in a more competitive world

25. Employers' organizations are also being challenged by globalization. The dynamics of employers' organizations, and the choice of issues on which coordination of views and policies is advantageous, have always been determined by their members being in competition with each other. But the intensified competition due to globalization and technological change is of a different order, affecting companies' views about the role of employers' organizations and whether their firms should take an active role in the activities of these organizations. Although by no means universal, some employers place more emphasis on determining wages and conditions of employment at the firm or plant level rather than through sectoral or national negotiations between federations of employer and trade unions. The growing diversity of company interests, emergence of MNEs and growth of small enterprises are also presenting an important set of challenges to employers' associations.[9]

Representation gap

26. The impact of globalization on the exercise of freedom of association and collective bargaining principles and rights means that a *significant representation gap has arisen in the world of work.* This representation gap is of concern since achieving the ILO's goal of decent work for all women and men in conditions of freedom, equity, security and human dignity is only possible if they can have a say in what this means for them. Freedom of association and the right to organize and bargain collectively are fundamental human rights. The way they are exercised has a major impact on work and living conditions as well as on the responsiveness of economic systems to the need for innovation.

Closing the representation gap and securing a voice for working women and men in a changing world

A growing sense of insecurity

27. Announcements by firms of restructuring, mergers, takeovers and layoffs are common occurrences. They contribute to a growing sense of insecurity amongst workers about their current employment situation. With both negotiated and statutory employment guarantees in practice proving to be more and more elusive, ensuring an *effective* voice at work is important to help people feel secure in a global economy. When workers have information about the forces affecting the firm and a measurable say in the strategies employed to deal with these external demands, they feel a greater sense of control over their own lives. This ability to exercise choice is one of the key elements of human dignity. It is important to close the representation gap that has developed in order to secure a voice for men and women in a changing world of work.

Workers and employers need representational security

28. Given the power asymmetry that exists between employers and workers in the employment relationship, workers have always stressed the need for independence and protection in their dealings with management and the promotion of their interests. A number of surveys confirm that workers continue to express desire for some form of collective representation.[10] This need for

[9] ibid.

[10] Workers surveyed in the Worker Representation and Participation Survey (WRPS) in the United States, were reported to want independence and protection of that independence in their dealings with management (representational security). See: R. Freeman and J. Rogers: *What workers want* (Cornell University Press, 1999). Also see: D. Peetz: *Unions in a contrary world: The future of the Australian trade union movement* (Cambridge University Press, Cambridge, 1998); A. Morehead, M. Steele, M. Alexander, K. Stephen, and L. Duffin: *Changes at work: The 1995 Australian Workplace Industrial Relations Survey* (Longman, Australia, 1997); M. Cully, S. Woodland, A. O'Reilly and G. Dix: *Britain at work: As depicted by the 1998 Workplace Employee Relations Survey* (London, Routledge, 1999).

independence in discussions with management concerning change and its consequences becomes increasingly important in a global economy. In order to secure and exercise an independent voice at work, workers and employers need representational security. *Representational security at work is based on the freedom of workers and employers to form and join organizations of their own choosing without fear of reprisal or intimidation. It refers to the institutional means of representation that the realization of these principles and rights allow.*

Representational security facilitates local responses to globalization

29. As we have seen, globalization has a different impact on countries, communities and sectors. Representational security facilitates local responses relevant to the particular challenges being faced in the various communities or sectors of the economy. Respect for freedom of association allows for the development of the institutional means of representation most relevant to the particular context and issue – be these rural tenant organizations, associations of traders in the informal economy, trade unions or employers' organizations. Strategies for the collective representation of interests by these institutions are also able to evolve in a way that most appropriately address the particular issue at hand – be this a negotiation concerning the use of land, a demonstration or campaign against the worst forms of child labour, a delegation of workers or employers addressing the government concerning the implications of a trade agreement or social dialogue to mitigate the impact of a financial crisis.

Collective representation of interests important for conflict management

30. Collective forms of representation in the workplace allow inherent conflicts of interests to be managed according to an agreed set of procedures. In the absence of interest representation by organizations freely chosen by workers or employers, conflict can fester and materialize in far more costly and socially destabilizing forms. The advance of democracy and increasing respect for civil and political liberties have enhanced the role that these organizations can play in managing conflicting interests and facilitating social stability. Representational security is the key to ensuring the collective representation of interests.

Broadening the scope of representational security

31. With work likely to be made up of a number of "employment episodes" at different locations and possibly even in different countries, workers are tending more and more to seek representational security across these episodes and sites of employment. The scope of collective representation (and representational security) must include an increasingly composite workforce. It is often the poorest of the world, such as marginal peasant farmers and landless labourers, who take the greatest personal risks when they try to become organized and get their voice heard where power resides, whether it is with the local landlord or public authority. Many categories of workers remain either uncovered or specifically excluded from legal protection and are thus under-represented at the workplace.[11] There are other non-traditional associations that sometimes give these workers voice. For example, although rural workers are seldom represented by trade unions, they may be "informally represented" by embryonic organizations that help them gain work opportunities.

Challenge for security in the informal economy

32. Freedom of association does not depend on working under a contract of employment.[12] Building up fresh approaches to representation of workers and employers in the informal economy can play an important role in protecting workers in this sector. An international Symposium on Trade Unions and the

[11] These categories include agricultural workers, domestic workers, non-nationals, public employees/civil servants, firefighters and prison staff, workers in export processing zones, etc. See ILO: *Review of annual reports under the Follow-up to the Declaration on Fundamental Principles and Rights at Work*, Governing Body doc. 277/3/1, Mar. 2000, Geneva.

[12] See ILO: *Review of annual reports*, op. cit., Part I, Annex 6, para. 21, p. 64.

Informal Sector in Geneva in October 1999 adopted a number of specific recommendations, which included the following:

- trade unions need to consider developing a dual organizing strategy including a "community-based" approach to organizing in conjunction with other "shopfloor" organizing methods;
- trade unions should establish mechanisms to systematically track contracting-out processes in order to identify potential members, specifically contract workers and homeworkers;
- there is a need to build coalitions with appropriate informal sector unions and organizations that already exist.[13]

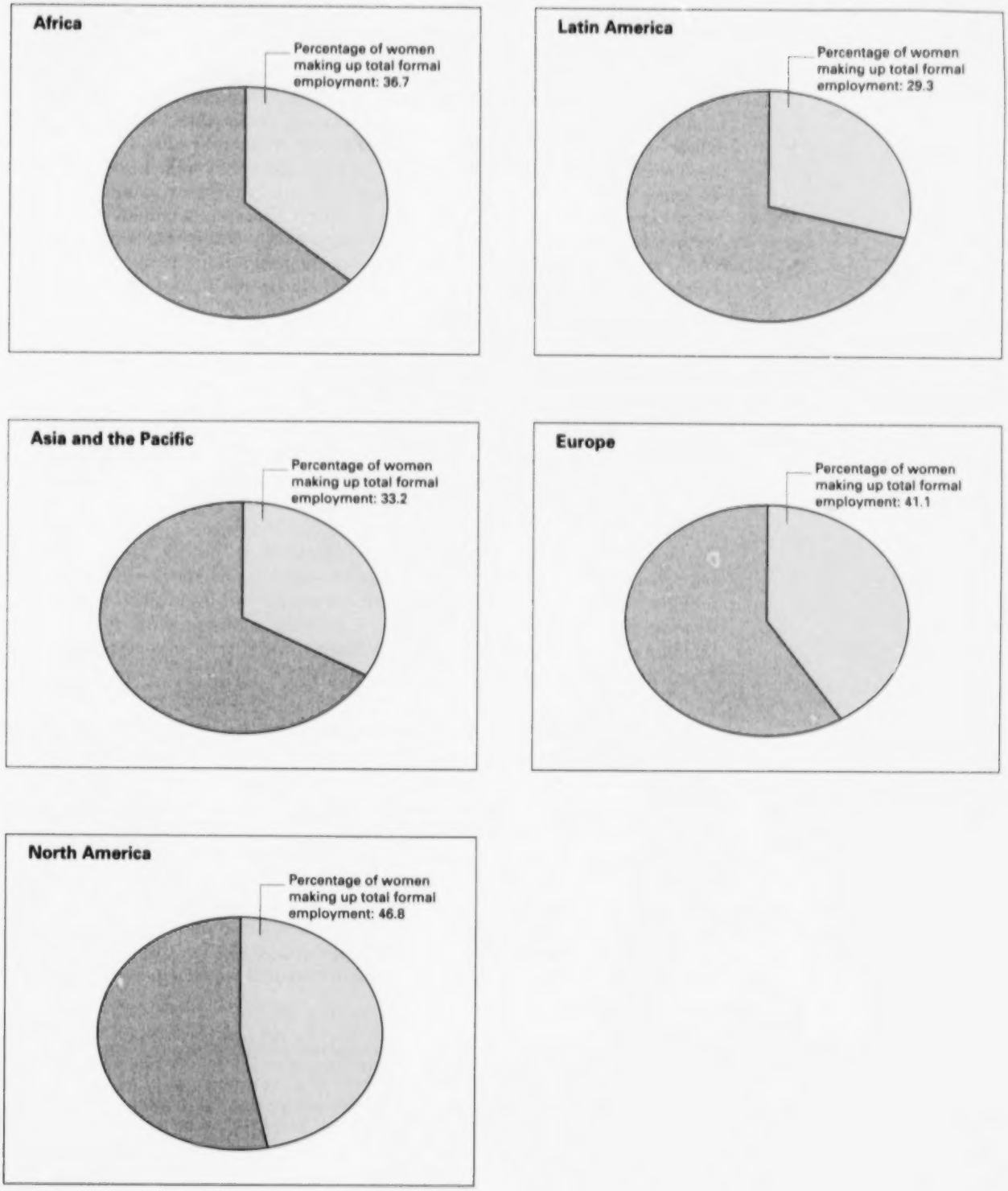
Overcoming gender inequalities through women's empowerment

33. Women account for a significant and rising share of the labour force (see figure 1.3) but women workers continue to be under-organized and under-represented in trade unions. To some extent this reflects the exclusion of female-dominated sectors, such as domestic workers, from the legal protection of freedom of association. The ability of women to exercise freely their rights to join trade unions and have their interests represented on a par with those of their male colleagues is vital to the achievement of both gender equality and trade union strength. Not only should women take their place at the negotiation table but gender issues will have to be made more explicit during the collective bargaining process to ensure that any agreement reflects the priorities and aspirations of both women and men.[14]

[13] ILO: *Conclusions and recommendations*, International Symposium on Trade Unions and the Informal Sector, Geneva, 18-22 Oct. 1999 (doc. TUIS/1999/1).

[14] See, for example: E. Goodson, K. Maloba-Caines, S. Olney, F. O'Neill: *Gender equality: A guide to collective bargaining* (Geneva, ILO, 1998), and ILO: "Collective bargaining: An instrument for equality", in *Gender! A partnership of equals* (Geneva, 2000) pp. 18-19.

Figure 1.3. Women's share of total formal employment


Africa
Percentage of women making up total formal employment: 36.7
Latin America
Percentage of women making up total formal employment: 29.3
Asia and the Pacific
Percentage of women making up total formal employment: 33.2
Europe
Percentage of women making up total formal employment: 41.1
North America
Percentage of women making up total formal employment: 46.8

Source: ILO: *Key Indicators of the Labour Market* (Geneva, 1999).

Changes in employers' organizations

34. Employers' organizations that develop common positions on labour market issues play an important role in many countries. By participating in broader processes of social dialogue[15] these organizations give voice to employer interests at the macroeconomic level. Accommodating the interests of multinational employers and those of smaller employers presents significant challenges. Employers at the head of smaller enterprises can benefit a great deal from membership in an organization able to provide help with training, recruitment and other aspects of human resource management, medical insurance and pensions. In many countries this type of support is expanding. As the direct role of the State as service deliverer diminishes,[16] associations of micro and small entrepreneurs are increasingly becoming partners in the channelling of services and resources. Helping fledgling associations transform into employers' associations also presents new opportunities for organization. At the same time, employers' organizations help to consolidate democratic regimes. In developing and transition countries, employers' organizations are providing important assistance to "new" employers after privatization and advising them on means to enhance productivity and competitiveness.

Meeting challenges posed by representation gap

35. Closing the representation gap that has developed in respect of the interests of workers and employers means finding the structures, policies and organizational alignments best suited to the changing face of work. An increasingly heterogeneous workforce with dissimilar patterns of labour participation and different interests and demands requires new methods of organization and representation. For trade unions this may require innovative organizing techniques and the provision of other services.[17] In the case of employers it may mean redefining the role and boundaries of employers' associations to meet contemporary labour market interests on a global scale. Technology and the media have not only changed the world of work but also provided the means of organizing and building solidarity across boundaries that was hitherto impossible. Respect for freedom of association and collective bargaining rights provides the basis for building the representational security needed to meet these contemporary challenges and opportunities.

Representational security and the high road to global competitiveness

Employers' gains from organized workplaces not seen by all

36. In a world of constantly shifting patterns of comparative advantage, firms which are unable to innovate and adapt will not survive. Management needs to be able to harness the firms' capacity for innovation, as well as to utilize technology and human resources and translate these into efficient work organization. Workplaces where the employees have exercised their right to organize tend to be better at innovation, adaptation and productivity.[18] However, trade unions are not universally seen by employers or public authorities as partners in this process; indeed they are seen as negative factors. Human resources management can be fully

[15] Social dialogue includes all types of negotiations, consultations or exchange of information between and among the tripartite and bipartite partners on issues of common interest relating to economic and social policy. See InFocus Programme on Social Dialogue, Social Dialogue Sector (http://www.ilo.org/public/english/dialogue).

[16] For example, the Central American Committee of Micro-enterprises (COCEMI), a non-profit, regional organization comprising seven national committees embracing the interests of various associations, takes an active part in regional debates with other sectors – including employers' and workers' organizations, women's and indigenous peoples' associations – on the way Central American economic integration is progressing. See: M. Tomei, *Freedom of association* ... (op. cit).

[17] See Dagg: "Organizing homeworkers into unions", in E. Boris and E. Prugl (eds.): *Homeworkers in global perspective: Invisible no more* (London, Routledge, 1996). See also A.V. Jose: *The future of the labour movement: Some observations on developing countries* (Geneva, ILO, International Institute for Labour Studies, 1999).

[18] See also ILO: *Collective bargaining, competitiveness and employment protection* (Geneva, forthcoming); P. Auer: *Employment revival in Europe: Labour market success in Austria, Denmark, Ireland and the Netherlands* (Geneva, ILO, 2000); L. Mishel and P. Voos: *Unions and economic competitiveness* (New York, Sharp, 1992); OECD: *Employment Outlook* (Paris, 1999).

compatible with freedom of association and collective bargaining, but some managers see it as a way to avoid independent collective representation by the employees. A unionized workplace can even be perceived as a sign of poor management.[19] And yet freedom of association is a natural corollary to freedom of enterprise.

Innovative partnerships

37. The crucial issue is to develop partnerships between the representatives chosen freely by the workers and management in such a way that they unlock the firm's potential for innovation, adaptability and productivity. Listening to the voices of those inside as well as outside the firm paves the way for better decisions. Workers who have been equally involved in the decisions are more likely to be committed to their implementation. Partnerships at the workplace facilitate stability and industrial peace in a context in which external demands for change are continuous.

Multiple skills and teamwork – key to successful companies in knowledge economy

38. Whilst by no means universal, one of the most dramatic effects of the technological revolution has been to reduce substantially the numbers of staff involved in supervising and recording the work process. Computers now automatically store and process information that managers and "frontline" producers can call up when they need it, thus significantly reducing the layers of hierarchy. Multiple skills and an ability to exercise responsibility are at a premium in the knowledge economy.[20] By comparison with the "Fordist" era of mass production based on the breakdown of the production process into simple repetitive tasks, workers are now required to use initiative and choose from a wide range of options made available by computers. This requires greater levels of skill and trust and a more open exchange of information in workplace relations.

A voice at work facilitates trust and cooperation

39. Instead of being a liability and impeding market efficiency, collective representation at work can facilitate greater degrees of cooperation and trust. Employers are beginning to realize that this can be a critical asset as they require a workforce they can trust to demonstrate initiative on the job. Equally workers need to be able to have confidence in managers if they are to embrace work processes that entail continuous adaptation. *Respect for a voice at work and genuine participation consistent with freedom of association lay the foundation for trust and cooperation in the management of change.*

Collective bargaining facilitates rapid change

40. The integration of capital markets has been accompanied by volatility in interest and exchange rates and changes in the direction and size of capital flows. All are major factors affecting business prospects. Managers know that the financial parameters within which they are planning can change suddenly, requiring a capacity for rapid adjustment, including the labour-cost component of final prices. The *process* of collective bargaining and social dialogue oils the wheels of change and enables prevailing agreements to be realigned in the light of changing circumstances.[21] The integration of capital markets also means that a crisis within one economy can trigger global economic instability requiring rapid economic adjustment. At the national level, social dialogue can facilitate the social bargains needed to support broader adjustment processes. There appears to be a convergence between the increasing demand for micro- and macro-adjustment capabilities and the growing (business) value of mechanisms, through which the direct voice of those concerned facilitates successful change and adjustment at the workplace and within economies.

[19] R. Adams: *Assessing the extent of freedom of association and the effective right to bargain collectively in light of global developments*, Background paper prepared for InFocus Programme on Promoting the Declaration (Geneva, ILO, 1999).

[20] For example, technology-driven changes in the chemical sector mean that higher training is demanded for technicians and plant operatives [ILO, Social Dialogue Sector, Sectoral Activities Programme: Chemical industries (http://www.ilo.org/public/english/dialogue/sector/sectors/chem.htm)].

[21] M. Ozaki (ed.): *Negotiating flexibility* (Geneva, ILO, 1999).

Investing in these partnerships requires commitment to new relationship with workers

41. While it is increasingly recognized that worker participation improves productivity and enhances firm performance and competitiveness,[22] many employers have yet to adopt a more open and constructive attitude to unions. Effective partnerships require the investment of management time in building relationships that allay workers' fears of change. Union leaderships may still be pursuing a confrontational, ideologically tinged approach. Enabling workers to make a meaningful contribution to problem-solving entails willing partners, the sharing of information, the creation of channels for collective representation, proper consultation and dialogue. Embracing the concept of a voice at work is a "high road" to competitiveness through productivity enhancement and innovation; however, it implies commitment and a significant change in traditional attitudes on both the side of management and unions.[23]

Collective bargaining in the public sector

42. The public sector faces similar competitive pressures to those of the private sector. Government decisions about the level of taxation and borrowing are being constrained and this has led to a tightening of controls on public spending in many countries. Many state-owned enterprises have been privatized or placed on a much stricter commercial footing. Public service employers have started to adapt and apply management techniques aimed at improving performance and reducing labour costs. These challenges and constraints are being compounded in countries undergoing structural adjustment and transition.[24] Respect for freedom of association and collective bargaining rights holds an equally important "business" value in the public sector. Collective bargaining can contribute in an important way towards agreements that do not disrupt overall budget plans and that improve the quality of service provision.

Private initiatives to give a social dimension to the global market

43. International business and employers' organizations representing private sector interests have acknowledged the need to follow this "high road" to global competitiveness. They are lending support to initiatives within the private sector for corporate social responsibility. In so far as these initiatives specifically include reference to all four categories of fundamental rights and principles at work, they provide considerable opportunities for the realization of these principles and rights.[25] One initiative originated with the United Nations Secretary-General in 1999, when he launched the "Global Compact" between the United Nations system and the world business community. In the Global Compact, the private sector is encouraged to support a set of core values covering labour, environment, and human rights, in an effort to give a human face to the global economy (see box 1.1). The International Organisation of Employers (IOE) has been an active supporter of the Global Compact initiative and has urged all employers' organizations to embrace it.[26]

---

[22] See, for example: D.I. Levine and L. D'Andrea Tyson: "Participation, productivity and the firm's environment", in A. Blinder (ed.): *Paying for productivity* (Washington, DC, Brookings Institution, 1990); J. Stiglitz: *Democratic development as the fruit of labor*, Keynote Address, Industrial Relations Research Association, Boston, 2000; and ILO: *Collective bargaining, employment protection and competitiveness*, op. cit.

[23] See: W. Sengenberger and D. Campbell: *Creating economic opportunities: The role of labour standards in industrial restructuring* (Geneva, ILO, International Institute for Labour Studies, 1994) and J. Stiglitz: *Democratic development* ... op. cit., for discussion of the principal-agent problem in industrial relations systems (the low involvement or "low road" workplace and the high involvement or "high road" workplace) and the value of worker involvement in resolving this.

[24] See ILO: *Joint Meeting on Human Resource Development in the Public Service in the Context of Structural Adjustment and Transition* (Geneva, doc. JMPS/1998/8, 14-18 Dec. 1998).

[25] The Working Party on the Social Dimensions of Globalization noted that of the four categories of fundamental principles and rights at work, freedom of association and collective bargaining rights received the least attention in these private initiatives (Governing Body doc. 273/WP/SDL).

[26] Other partners including the International Confederation of Free Trade Unions (ICFTU) have also been active supporters of this initiative. See http://www.unglobalcompact.org/gc/UNWeb.nsf/content/partnersandinitiatives.htm

Box 1.1
The Global Compact: Challenging the business community

The Global Compact challenges the business community to embrace, support and enact a set of nine core values in the areas of human rights, labour standards, and environmental practices:

Human Rights

1. **Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence; and**
2. **make sure they are not complicit in human rights abuses.**

Labour

3. **Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;**
4. **the elimination of all forms of forced or compulsory labour;**
5. **the effective abolition of child labour; and**
6. **eliminate discrimination in respect of employment and occupation.**

Environment

7. **Businesses should support a precautionary approach to environmental challenges;**
8. **undertake to promote a greater environmental responsibility; and**
9. **encourage the development and diffusion of environmentally friendly technologies.**

Principles 3 to 6 of the Global Compact call on world business to demonstrate global leadership by upholding the values that lie at the heart of decent work: freedom of association and collective bargaining; and freedom from employment discrimination, child labour, and forced labour.

The ILO works with its constituents and their business partners to translate the labour principles of the Compact into measures that promote decent work and life – at the workplace and in communities of operation around the world. Country-by-country databases, training programmes and field projects contribute to those efforts. The Global Compact website provides easy access to ILO information on the following key points:

What does each principle, including freedom of association and the right to collective bargaining, mean?
Why should business care about those values?
What can business do – in the workplace and in the community of operation?

What international documents guide the steps to realizing the principles the world over?

For more information see:
http://www.unglobalcompact. org

The role of policy in realizing the rights to organize and bargain in a changing world

The policy framework in a global economy

44. Government policies and legislation play an important role in either supporting or eroding the exercise of freedom of association and collective bargaining rights in an increasingly competitive world. Firms are confronted with a rapidly changing global market environment, including a financial regime prone to volatility in which they may need to change working arrangements at short notice. Workers, on the other hand, are concerned about security of employment and income. Inequalities and insecurities threaten to disrupt economic and social cohesiveness. As we have seen, respect for freedom of association and the right to collective bargaining can, by facilitating organizational and production flexibility and innovation, improve an individual firm's efficiency. But these rights also provide the means with which to address poverty and the distributional challenges that threaten social stability. It is increasingly recognized that equity and distributional issues are among the factors that determine an economy's overall performance and influence poverty. *Governments face the task of working out a policy framework that helps employers and workers achieve a balance between market pressures and the need for social stability.*

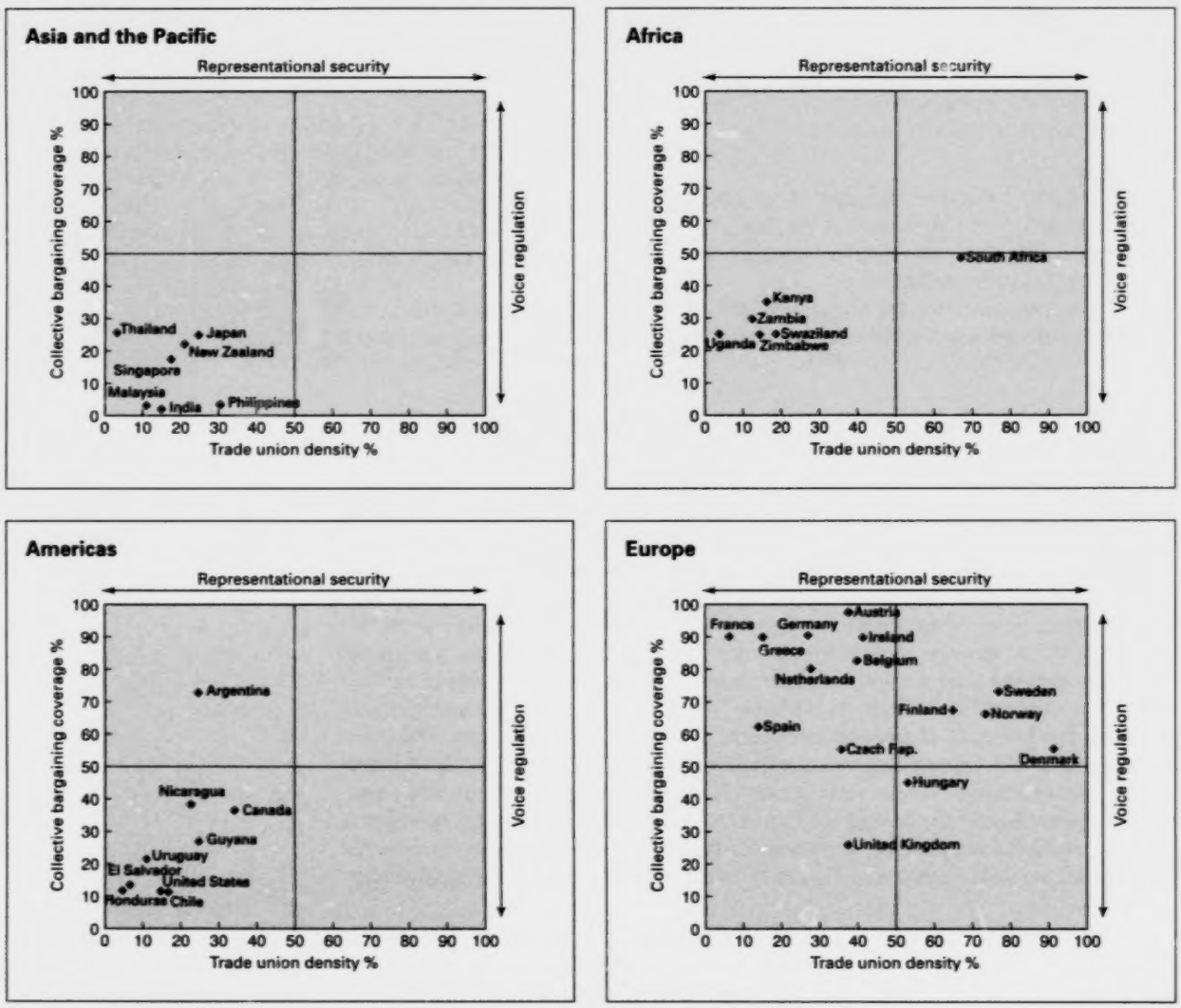
Strong representational institutions provide mechanisms for adapting to change

45. Purely statutory forms of regulation to achieve this balance, even when initially well designed and supported by the social partners, are less dynamic than *voice regulation*[27] where systems of consultation and negotiation supplement minimum legal frameworks. These "voice regulated systems" should not be confused with systems in

[27] See G. Standing: *Global labour flexibility-seeking distributive justice* London, Macmillan Press Ltd., 1999 for discussion on statutory regulation, market regulation and voice regulation.

which the State allows the market alone to regulate conditions of employment. Systems of voice regulation place an emphasis on the determination of conditions of employment by *voice mechanisms*. For voice regulation to be an effective means of promoting efficiency and addressing equity and distributional issues, labour market institutions need to be strong, representative and responsive. The development of these institutions and mechanisms of voice must therefore be *underpinned by freedom of association* and reinforced by mechanisms of conflict resolution that can facilitate responsiveness to change. Figure 1.4 shows the degree to which different countries rely on voice regulation. This is determined by the extent to which countries rely on voice mechanisms to determine conditions in the labour market. Of those countries that rely on a higher degree of voice regulation, recent evidence reveals that Austria, Denmark, Ireland and the Netherlands have performed favourably in terms of both employment recovery and economic performance.[28] The diversity of these countries' legal and industrial relations frameworks shows that although *there are many ways to achieve voice regulation, all rely on freedom of association and collective bargaining.*

Figure 1.4. Voice regulation and representational security



Source: InFocus Programme on the Declaration, based on data from ILO: *World Labour Report 1997-98* (Geneva, 1997) and *Country studies on the social dimensions of globalization*, Task Force on Country Studies on Globalization (Geneva, ILO, publication forthcoming).

[28] P. Auer: *Employment revival in Europe: Labour market success in Austria, Denmark, Ireland and the Netherlands* (Geneva, ILO, 2000).

Options for levels of bargaining is key to achieving best outcomes

46. Intensified competition and the need for greater flexibility have led some policy-makers and enterprises to believe that decentralized collective bargaining is more conducive to economic performance, as it responds better and quicker to the market position of individual enterprises. Advice given by international and regional financial institutions has taken this as a point of departure, suggesting enterprise-level bargaining in cases in which the existing structures are geared to sectoral or national solutions. Such advice naturally has an impact on the institutions that have received the mandate to participate in sectoral or national social dialogue. Whether or not decentralization actually leads to better economic performance is a controversial subject.[29] The key may prove to be a combination of bargaining and partnership at different levels.[30] The major issue is that a genuine bargaining system should not be established – or dismantled – from the outside but must be the choice of the social actors within the national economy. This calls for strong and adaptable labour market institutions and their articulation in a system that allows for all relevant levels of interaction.

Poverty reduction needs integrated solutions

47. To be effective in eliminating poverty, development policies must fully integrate economic, social and political dimensions. Addressing one dimension alone will simply not achieve the results being sought. Sectoral approaches to development that give primacy to economic and financial objectives, on the assumption that social goals will be tackled separately, are destined to fail or be only partially successful; overlooking the needs and aspirations of the workforce will ultimately undermine short-term economic gains. Participation in poverty-reduction strategies means having an effective voice through the collective organization of interests. This, in turn, implies organizational rights and representational security. Respect for these rights builds social capital[31] and paves the way for achieving decent employment and incomes for all women and men, thereby reducing poverty and inequality. With the total number of people living on under US$2 a day now estimated at nearly 3 billion, accounting for almost half the world's population,[32] the international community must focus on facilitating policy frameworks that create an environment in which productive employment is increased and incomes from work are raised – as part of an integrated world development strategy. The organization of work relations is central to this challenge. There is growing acceptance that respect for these rights is not only a desired outcome of economic development, but also a critical means of achieving sustainable development.

A gender dimension

48. Along with enhancing access to equality in employment, the poverty eradication strategy pursued by the ILO centres around strengthening women's power to bargain and negotiate and providing innovative strategies for social protection. These, in turn, depend upon respect for freedom of association and the right to engage in collective action.

The link between freedom of association and collective bargaining rights and poverty reduction

49. The realization of these rights can contribute to the more efficient and effective functioning of particular sectors of the economy that are critical to successful poverty reduction. The international financial institutions have rightly placed a premium on investing in and enhancing performance of the education and health sectors which employ a high percentage of women. The quality of service these sectors provide has a clear influence on productivity of the labour

[29] See for example L. Calmfors and J. Driffill: "Bargaining structure, corporatism and macroeconomic performance", in *Economic Policy* (Cambridge, Cambridge University Press, 1988), No. 6, pp. 19-61; S. Nickell: "Unemployment and labour market rigidities: Europe versus North America, in *Journal of Economic Perspectives* (Nashville, Tenn., 1997), Vol. 3; R. Di Tella and R. MacCulloch: *The consequences of labour market flexibility: Panel evidence based on survey data* (Harvard University, 1998); R.J. Flanagan: "Macroeconomic performance and collective bargaining: An international perspective", in *Journal of Economic Literature* (Nashville, Tenn., 1999), Vol. XXXVII, pp. 1150-1175.

[30] In Central and Eastern Europe, for instance, the lack of consolidated collective bargaining machinery at industry level impedes the resolution of sectoral problems. See: G. Casale (ed.): *Social dialogue in Central and Eastern Europe* (Budapest, ILO, 1999).

[31] Social capital refers to networks, linkages between institutions and relationships that both encourage trust and reciprocity and shape the quality of a society's social interactions. World Bank: *World Development Report* (New York, Oxford University Press, 1999).

[32] http://www.worldbank.org/html/extdr/extme/jdwsp021600.htm

force and overall well-being of women and men, and hence on the incidence and distribution of poverty. Maintaining a smooth running education system is an important factor in combating exploitative child labour. Yet in education for instance, poor labour relations often exacerbate underlying resource constraints. Respect for freedom of association and collective bargaining can help produce solutions that allow public services to contribute effectively to an integrated poverty reduction and development strategy.[33]

Broad agreement to social rules speeds up economic restructuring and facilitates economic recovery

50. In considering the most appropriate national policies in an open world economy, the debate is beginning to shift from a narrow preoccupation with "getting prices right" and reining back regulations, to a broader consideration of how best to govern the market and balance social and economic goals. In an open economy, the policy changes necessary to restore macroeconomic balance, such as devaluation or an increase in interest rates, can have important distributional implications and trigger disputes that delay adjustment. Research shows that countries to have benefited most from integration into the world economy are those that already have institutions of conflict management in place and are thus better equipped to handle these disputes.[34] The realization of freedom of association and the right to collective bargaining enable the development of these institutions and provide important mechanisms (often social dialogue of one form or another) for reaching broad agreement on *social rules* that determine the parameters of, for example, macro issues such as inflation control and unemployment reduction. In so doing they facilitate *social efficiency*, achieving a balance between the dictates of the global market and social goals. Experience gleaned on recovery from the Asian financial crisis has pointed to the value and importance of sound labour market institutions, systems of collective bargaining, dispute prevention and resolution and social dialogue in dealing with the consequences of the crisis and *enabling economic and social recuperation.*

Fundamental principles and rights at work in a global economy

A social pillar to the evolving governance structure of the global economy

51. Globalization delivers enormous new opportunities; however they tend to be concentrated, and a significant number of countries (workers and employers) are denied its benefits. It is therefore hardly surprising that there are many in developing countries, as well as groups of workers in traditional occupations in industrialized countries, who have the impression that the process of globalization and the world trading system is stacked against them. These perceptions have already emerged as a social backlash in the streets of Geneva, Seattle and Davos. When the social legitimacy of the process is in question, there is a need to reflect upon ways to tackle the economic and social management of the world economy. The ILO Declaration is one of the instruments to promote social goals within the global economy. Respect for freedom of association and collective bargaining rights provides an indispensable mechanism whereby women and men at work may have their voices heard and claim their fair share of the fruits of globalization.

> ***"... Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions; ..."***
>
> ILO Declaration on Fundamental Principles and Rights at Work, Preamble, para. 2.

[33] See, for instance, reports of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART), available on the ILO website.

[34] D. Rodrick: *The new global economy and developing countries. Making openness work* (Baltimore, Johns Hopkins University Press, 1999).

Deepening democracy and integrating a social dimension into the global economy

52. Whilst much attention has been given to the role of economic fundamentals in maintaining economic stability, the *social fundamentals* underwritten by the Declaration on Fundamental Principles and Rights at Work make an important contribution towards integrating a social dimension into the global economy. Wider benefits can be derived from a free labour movement, independent employers' organizations and networks of participation in civil society. These social institutions can play a key role in determining the level and quality of democratic accountability, thus ensuring more transparent (and efficient) public policies and better social protection. This is an advantage in a global economy characterized by economic instability. An important challenge for governments, international multilateral and financial institutions and international economic agents is to reinforce the mechanisms that promote the realization of the principles of freedom of association and collective bargaining.

> ***"The security provided by democracy may not be sorely missed when a country is lucky enough to be facing no serious calamity, when everything is running along smoothly. But as a matter of fact, the danger of insecurity arising from changes in the economic or other circumstances, or from uncorrected mistakes of policy, can lurk solidly behind what looks like a healthy State ... The protective role of democracy is strongly missed when it is most needed".***
>
> (Address by Professor Amartya Sen, Nobel Laureate in Economics, to the International Labour Conference, 87th Session, Geneva, 1999.)[35]

Closer cooperation between international institutions

53. International financial organizations recognize today that the institutional structure within which markets function and the process through which reforms are generated and implemented have a determining impact on their success. The International Monetary Fund's Article IV surveillance report on Indonesia in 1999 welcomed the Government's decision to ratify the ILO's fundamental Conventions.[36] As part of a wider consultation in many countries, IMF and World Bank staff meet unions and employers' organizations more frequently, which results in their views being taken into account in policies linked to funded programmes. Institutional collaboration between the ILO and the international financial institutions has also been improved, including with the poverty-reduction strategies of these institutions.[37]

Conclusion

Challenges to decent work in the twenty-first century

54. Freedom of association and the right to organize and bargain collectively are fundamental human rights to be respected all over the world. Respect for these principles and rights is good for business, for labour, for governments and for the civil society, both domestically and internationally. Yet private business, public employers and public authorities do not always appreciate that these rights contribute to economic performance and equitable development. As we have seen in this chapter, globalization is also impacting on the exercise of freedom of association, collective bargaining rights and the institutions affording representational security. **A significant representational gap has arisen in the world of work in both the formal and informal economy.** The next chapter looks at the state of the world in respect of these principles and rights. Where are they being challenged and why?

---

[35] http://mirror/public/english/standards/relm/ilc/ilc87/a-sen.htm

[36] See: "IMF concludes Article IV consultation with Indonesia", in *Public Information Notice No. 99/33* (Washington, IMF, 1999).

[37] The ILO Declaration Expert-Advisers, in reviewing the annual reports under the Follow-up to the Declaration, commented that the reports had produced information to justify the ILO's continued efforts to enhance understanding among the international and regional financial institutions about fundamental principles and rights at work and how their respect should be achieved in the context of sound economic growth. See ILO: *Review of annual reports*, op. cit., Part I, Governing Body doc. 277/3/11, para. 66, p. 16.

2. The global picture

Introduction

A dynamic global picture

55. Freedom of association and collective bargaining rights are a crucial element of long-term competitiveness and sustained development and vital for attending to rising insecurity and social unease. Yet respect for these fundamental principles and rights at work has not been attained everywhere and by everyone. This chapter takes stock of the situation as regards the realization of these principles and rights around the world. On the basis of information from the ILO's supervisory machinery[1] and government reports under the Follow-up to the Declaration, it assesses progress made in recent years and identifies where problems still exist and why. Finally, it highlights information from annual reports under the Declaration about positive measures being taken by member States in the direction of respect for freedom of association and effective recognition of the right to engage in collective bargaining.

Democracy and civil liberties

Denial of civil liberties pre-empts freedom of association

56. Two of the major advances of the past century have been the codification and promotion of human rights – civil, political, economic, social and cultural – and the deepening of democracy in all regions. The consolidation of democracy and expanded freedom of association go hand in hand. Recent developments in *Chile*, *Indonesia*, *Mozambique*, *Poland*, *South Africa* and elsewhere bear witness to this. Recognition of freedom of association has been embedded in the ILO Constitution since the Organization's founding in 1919. And some 30 years ago, the International Labour Conference recognized the close link between the exercise of freedom of association and collective bargaining and fundamental civil liberties when it adopted a resolution on the subject (see resolution in box 2.1).

[1] The main aspects of this supervisory machinery are set out below in Chapter 3.

Box 2.1
Resolution concerning trade union rights and their relation to civil liberties[2]

The General Conference of the International Labour Organization ...

1. Recognises that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. *Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:*

(a) the right to freedom and security of person and freedom from arbitrary arrest and detention;

(b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(c) freedom of assembly;

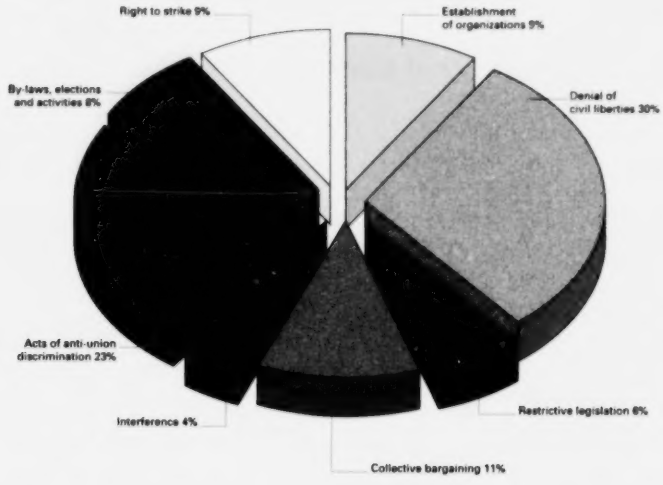
(d) the right to a fair trial by an independent and impartial tribunal;

(e) the right to protection of the property of trade union organizations ....

57. Yet as reflected in the conclusions of the ILO's supervisory bodies, the restriction, and sometimes suppression, of civil liberties remains a major cause of infringements of freedom of association. The ILO Declaration Expert-Advisers have also highlighted the "critical relationship between workers' and employers' rights of association and civil liberties".[3] While there has been some improvement in this area in recent years, approximately one-third of all complaints submitted to the Committee on Freedom of Association[4] still – whether in whole or in part – relate directly to violations of civil liberties (see figure 2.1 below).

Figure 2.1. ILO Committee on freedom of association

Allegations examined, by type of restriction



[2] Adopted by the International Labour Conference at its 54th Session on 25 June 1970.

[3] *Review of the annual reports under the Declaration on Fundamental Principles and Rights at Work, Part I, Introduction of the ILO Expert-Advisers to the annual reports* (Geneva, 2000), Governing Body doc. 277/3/1), Annex 6, p. 60.

[4] The tripartite ILO Committee on Freedom of Association receives allegations of infringement of freedom of association principles by ILO member States from employers' and workers' organizations – whether or not the Conventions concerned have been ratified by the country in question. It reviews the substance of a case, makes conclusions and recommendations which are brought before the Governing Body. For details on this and other procedures, see: D. Tajgman and K. Curtis: *Freedom of association: A user's guide: Standards, principles and procedures of the International Labour Organization* (Geneva, ILO, 2000).

Civil liberties violations and trade union rights

58. Over the past ten years, the Committee on Freedom of Association has addressed allegations of violations of trade union rights involving:[5]

- murders and/or disappearances (e.g., *Colombia, Dominican Republic, Ecuador, Guatemala, India, Indonesia*);
- physical assaults against persons (e.g., *Argentina, Central African Republic, China, Colombia, Ecuador, Ethiopia, Guatemala, Haiti, Mauritius, Sudan, Zimbabwe*);
- arrests and detentions (e.g., *Central African Republic, Cape Verde, China, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, El Salvador, Ethiopia, Gabon, Guinea, Guinea-Bissau, Indonesia, Republic of Korea, Lebanon, Morocco, Niger, Nigeria, Pakistan, Panama, Paraguay, Senegal, Swaziland, Sudan*);
- forced exile (e.g., *Myanmar, Bahrain*);
- obstacles to freedom of movement (e.g., *Bangladesh, Colombia, Congo*);
- breaches of freedom of assembly (e.g., *Kenya, Zimbabwe*), of demonstration (e.g., *Belarus, China, Côte d'Ivoire, Djibouti, India, Mauritius, Senegal, Swaziland*), of opinion and expression (e.g., *China, Ecuador, Morocco*);
- violations of trade union premises and property (e.g., *Bulgaria, Central African Republic, Côte d'Ivoire, Ethiopia, Lebanon, Nicaragua, Russian Federation, Senegal, Ukraine*);
- declaring states of emergency and suspension of civil liberties (e.g., *Bolivia*).

The rule of law

59. Particularly serious problems are posed by situations in which there is a significant absence of the rule of law and the most basic considerations of due process cannot be assured; the same also holds true for situations in which acts of extreme violence against trade unionists take place without arrest, trial or conviction in conditions of virtual impunity. In such cases, concerted efforts need to be aimed as much at the restoration of the control of the state authority and the consequent guarantees of legal protection as at the general protection of trade union rights.

Serious cases and continued failure to apply ratified FOA Conventions

60. In addition to the cases examined by the Committee on Freedom of Association, the tripartite ILO Conference Committee on the Application of Standards has singled out 15 special cases of non-application of Conventions Nos. 87 and 98 since 1990 *(involving Cameroon, Colombia, Morocco, Myanmar, Nigeria, Panama* and *Swaziland)*. The United Nations General Assembly, in its most recent resolution concerning the human rights situation in Myanmar, deplored the continuing violation of those rights in that country, including "the denial of freedom of … association"[6] – an issue raised in the ILO supervisory system for some time.

Civil liberties restored

61. On the other hand, it is encouraging to note that there has been a significant improvement in the respect for civil liberties in several countries during the ten-year period in question, particularly as concerns the release of detained trade unionists (e.g., *Republic of Korea, Indonesia, Nigeria, Swaziland*) and of detained employers (e.g., *Nicaragua*), and the lifting of a state of emergency (e.g., *Bolivia*). Similarly, basic freedom of association rights have often been restored following the return to the rule of law and democracy in countries formerly under dictatorships or martial law (e.g., *Nigeria*), or in countries which have achieved major political and economic reforms (e.g., *South Africa, Indonesia*).

---

[5] The examples given below, and in the rest of this chapter, are nothing more than examples. They do not purport to give an exhaustive list of pending issues or of cases of progress. For a more complete picture of the issues involved, see the most recent ILO General Survey of the Committee of Experts on this subject: *Freedom of Association and Collective Bargaining*, Report III, Part 4B, International Labour Conference, 81st Session, Geneva, 1994, and annual reports of the Committee of Experts on the Application of Conventions and Recommendations, which are discussed in the Applications Committee of the International Labour Conference (its report appears as part of the *Provisional Record* of the Conference, available on the ILO website).

[6] United Nations: Resolution adopted by the General Assembly: *Situation of human rights in Myanmar* (A/RES/54/186, adopted on 17 Dec. 1999 (para. 5)).

Freedom of association for representational security

The key enabling right to all rights at work

62. The right to organize is the key enabling right and the gateway to the exercise of a range of other rights at work. Inevitably if workers or employers are denied the possibility of organizing, they will not have access to these other rights. The reasoning in the previous chapter underlines that there are benefits to all parties directly involved, and to society at large, if the right to organize is respected fully, and becomes the basis for constructive relations at work. Yet there are still widespread and sometimes serious violations of the right to organize. This section outlines the characteristics of these violations and addresses the reasons for their persistence.

Conditions in both law and practice have a serious impact on the right to organize

63. The most easily identifiable denials of the right to organize are to be found in the laws of a number of countries which prohibit the independent formation of any type of organization by all – or specified categories of – workers, or which limit the freedom of workers and employers to form and join organizations of their choice. Considerable progress has been made in recent years in bringing an end to such situations. But those that remain constitute some of the gravest contraventions of the fundamental principles of freedom of association. Less visible, but equally pernicious, are extra-legal or informal denials – or discouragement of – the right to organize. Attempts to address these denials require providing for adequate protections against acts of anti-union discrimination. But they should also include pre-emptive action which aims at establishing wide acceptance of the right to organize and the proposition that its violation is neither useful nor tolerable. The overall challenge is to create a climate in the formal as well as the informal economies which enables free organization, and where those engaged in it can act without fear of negative consequences.

Manifest violations

64. Today, outright prohibitions on any type of worker organization are rare (e.g., *Oman, Saudi Arabia, United Arab Emirates*). Some countries (e.g., *Bahrain, Qatar*) allow only committees of workers, labour councils or welfare associations whose freedom of action is tightly constrained and which therefore do not have the attributes of independent workers' organizations. Some countries have legislation permitting trade unions but refuse their registration (e.g., *Equatorial Guinea*).

Legislatively imposed monopolies

65. A more frequent denial of the right to organize exists when governments prescribe single organizations to which workers or employers may belong, outlawing and suppressing any others. This type of legally enforced monopoly is in direct contradiction to the right of employers and workers to form and join organizations of their own choosing. A resolution adopted by the International Labour Conference in 1952 concerning the independence of the trade union movement underlines the significance of this issue, and the fact that, whatever the advantages to be had from unity in the organization and representation of workers and employers, pluralism must always remain an option (see box 2.2). Unity must be chosen, not imposed: pluralism must likewise be the outcome of free choice and not external imposition.

Box 2.2
Resolution concerning the independence of the trade union movement[7] (extracts)

Whereas a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country;

Whereas the relations between the trade union movement and political parties will inevitably vary for each country; and

Whereas any political affiliation or political action by the trade unions depends on national conditions in each country;

Considering nevertheless that there are certain principles which should be laid down in this regard which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of the workers,

The International Labour Conference ... adopts the following resolution:

1. **The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.**
2. **The trade unions also have an important role to perform in cooperation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.**
3. **To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.**
4. **A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.**
5. **When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country.**
6. **Governments in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.**

Significant decline in state-control of trade unions

66. The most remarkable progress in respect of the right to organize in recent years has been made through the ending of state-sponsored and controlled trade union monopolies. This type of change has affected the Central and Eastern European and African regions on a very wide scale (e.g., *Algeria, Belarus, Bulgaria, Cape Verde, Congo, Guinea, Hungary, Madagascar, Mongolia, Poland, Romania, Russian Federation, Rwanda, United Republic of Tanzania, Ukraine*). While the process has inevitably involved significant difficulties, for example in respect of the distribution of the assets of the former monopoly organizations, and equal treatment between these organizations and newly formed ones, it clearly constitutes a qualitative transformation of historic proportions.

Yet political control remains in some countries

67. Yet some state monopoly situations remain. They are generally in countries where political power is also wielded by a single party, and where there is a recognized or organic link between those exercising political power and the prescribed actors in the world of work (*China, Cuba, Iraq, Sudan, Syrian Arab Republic, Viet Nam*). In such circumstances, trade unions and employers' organizations are subordinated to the organs of political power. The right to form and join organizations freely is not compatible with single-party rule.

[7] Adopted by the International Labour Conference at its 35th Session on 26 June 1952.

The impact of globalization on state monopoly organizations

68. However, some elements in the circumstances of today's union and employer monopolies differentiate them from those that have disappeared since the end of the 1980s when the economic setting was dominated by the State and subject to central planning. Little if any role was allowed to private enterprise – and indeed to any private economic and social initiatives – and foreign direct investment was targeted to support state-set objectives. The place attributed to market forces and to private actors has increased, sometimes dramatically. State monopoly organizations thus face new and unaccustomed challenges.

Concerns for ordered industrial relations

69. There are a smaller number of cases *(Brazil, Nigeria)* in which legally prescribed trade union monopolies continue to exist at different levels in situations where there is political pluralism; indeed in these countries there may be no evident restriction on the independence of the unions. A case in point is *Brazil* where, despite legislative prescription, the situation in practice is rather one of a multiplicity of trade unions. It is possible that some limitations on the right to organize reflect a concern by governments that they cannot deal with the existence of more than one organization in a given area of activity. In other national circumstances, *Uganda* has also not yet repealed its legislation stipulating a sole central trade union federation.

Important alternative voices registered

70. The recent registration of important alternative voices, especially at the confederation level, has been noted in respect of *Argentina, Belarus, Côte d'Ivoire, Indonesia, and the Republic of Korea.* In order to ensure a balance between pluralism and an orderly industrial relations system, focus may need to be placed on measures for the acknowledgement of different levels of representativeness, conceding certain prerogatives to most representative organizations and providing adequate safeguards to other occupational organizations.

Administrative requirements for the right to organize

71. It is a basic precept of the right to organize that workers and employers be able to establish organizations of their choosing without prior authorization. Any administrative requirements which are preconditions for the free functioning of an organization should be of a purely formal nature. In a number of countries (e.g., *El Salvador, Lebanon*) legal requirements go beyond this and infringe upon the right to organize. In addition, provisions which do not a priori appear to present obstacles, and in normal practice do not do so, can be applied in a way which is problematic. This may occur at times of tension or particular difficulties. In either case observance of the principle that administrative or judicial measures should not allow arbitrary or discretionary powers to deny the formation of freely chosen organizations is integral to the respect of freedom of association.

Signs of improvement for some workers

72. In several countries, basic aspects of the exercise of the right to organize that were previously limited for certain categories of workers have been extended in respect of the following: public employees (e.g., *Chile, Cyprus, Dominican Republic, Gabon, Guatemala, Mali, Nicaragua, Panama, Paraguay, Peru, Poland, South Africa*), rural workers (e.g., *Barbados, Dominican Republic, Lesotho, Panama, South Africa*); hospital workers and workers in medical institutions (e.g., *Philippines, Pakistan*), teachers and university professors (e.g., *Republic of Korea, Nigeria, Philippines*); self-employed (e.g., *Peru, Nicaragua*); casual workers (e.g., *Cameroon*); domestic workers (e.g., *Ethiopia*); and foreign workers (e.g., *Cameroon, France (French Polynesia), Luxembourg, Niger, Panama*). A number of governments reporting under the Declaration Follow-up reported broad coverage of their legislation in relation to freedom of association.

Excluded categories of workers

73. Despite progress, some categories of workers remain excluded from the coverage of relevant legislation. Such exceptions should be seen against the fundamental principle that *all workers and employers, without any distinction whatsoever,*

should have the right to organize, the only possible exclusion being in respect of the armed forces and police (although in some countries organizations representing these categories do exist). If considerable numbers of people are denied their right to organize by virtue of the status of the sector, occupation or place in which they work, questions need to be addressed: Where do the most serious problems lie, and what is the reason for them?

Agricultural workers and the rural sector

74. About one-half of the global workforce is found in the rural sector, often living and working in arduous conditions. Here the representational gap is particularly marked. This situation prevails despite targeted international efforts, notably the adoption in 1975 of the Rural Workers' Organizations Convention (No. 141), which requires ratifying governments to carry out a policy of active encouragement to strong and independent organizations of rural workers, with a view to eliminating obstacles to their establishment and growth. In addition to the inherent difficulties in organizing, national legislation of a significant number of countries either denies the right to organize in agriculture, or excludes this sector from the relevant legal protections (e.g., *Afghanistan, Bolivia, Burundi, Canada, Honduras, India, Jordan, Liberia, Pakistan, Paraguay, Philippines, Swaziland, Syrian Arab Republic, United Arab Emirates, United States*). There seem to be two possible reasons for this shortcoming. National governments may consider that the nature of the rural sector makes it practically impossible for their labour administrations to enforce the right. Alternatively, there may be a belief that the nature of work in the sector (such as the absence of employment relationships typical to other sectors or the essentially paternalistic nature of the relationship, which is also often of a seasonal or casual character) makes it rather inaccessible to the right to organize. Women often make up a large proportion of agricultural workers and the obstacles to their organization and speaking with a representative voice are multiple. Concerted action in this sector would aim at removing formal obstacles to freedom of association, and promoting the creation and growth of strong rural workers' organizations.

The public sector

75. The public sector is the other most widely subjected to restrictions on the right to organize (e.g., *El Salvador, Gambia, India, Kenya, Republic of Korea, Nepal*). The situation in these countries varies from outright prohibitions on organization, to the imposition of conditions on the nature of organizations which public sector employees may form or join. The justifications of these limitations are relatively familiar. Some are based on the premise that as servants of the State, the status and responsibilities of public sector employees are incompatible with membership of an occupational organization, or the collective action that might ensue from this membership. That view is reflected in the advantages sometimes enjoyed by those working in the public sector, in terms of job security, pension rights and pay determination, which can be presented as compensation for the withholding of fundamental rights at work. The public sector is under heavy pressure from tight fiscal disciplines, and it has to match the competitive climate of the private sector. With work performance often subjected to detailed scrutiny, public sector employees today often face the same anxieties about job security as do their private sector counterparts. Downward pressure on government spending, too, impacts on pay levels. They therefore need to be able to organize and collectively defend their interests. A number of annual reports from governments under the Declaration Follow-up indicated ways in which countries were making increasing efforts to facilitate this.

Domestic workers

76. A number of countries (e.g., *Brazil, Canada, Jordan, Kuwait*) exclude domestic workers from the coverage of legislation which otherwise guarantees the right to organize. These workers face very specific problems, and are often isolated and vulnerable. Overwhelmingly women, they frequently find jobs far

from their homes and families in unfamiliar circumstances which they may find hostile. Their difficulties in exercising their right to organize are obvious and great, and at the individual level often overwhelming. A major promotional effort requires the removal of formal legal obstacles, and rejection of the notion that the nature of their work, and their relationship with their employers, in whose house they probably live, makes it inappropriate to seek the support of an organization.

Organization in essential services

77. A final remark concerning sectorally based restrictions concerns those which apparently stem from the view that certain activities are simply too important to society for them to be subject to the right to organize. In various countries teachers (e.g., *Cameroon, Ethiopia*), doctors and other medical staff (e.g., *Kenya*), firefighters (e.g., *Japan, Republic of Korea, Venezuela*), and prison staff (e.g., *Swaziland*) are not able to exercise this right. The concept of essential services and the reasonable restrictions which may be applied to them are well established by the supervisory bodies of the ILO.[8] Even in these essential services, the right to *organize* is to be guaranteed. Reports submitted under the Declaration Follow-up contain information from governments on increased representation opportunities for previously excluded groups (e.g., *Republic of Korea* in relation to civil servants and teachers).

Migrant workers

78. The Declaration on Fundamental Principles and Rights at Work makes specific reference to migrant workers, many of whom work in countries or sectors in which more general prohibitions are common. However, superimposed on these are specific bans on non-nationals from forming or joining unions (e.g., *Kuwait*), an implicit exclusion from labour legislation (e.g., *Kyrgyzstan*), or prohibitions or excessive restrictions on holding office within occupational organizations (e.g., *Mauritania, Nicaragua, Rwanda, Venezuela*). These significant denials of fundamental rights also block off important means by which migrant workers can act to combat other abuse to which they are particularly vulnerable, most notably discrimination in employment or occupation (another category of fundamental principles and rights at work).

The right to organize for employers

79. Even if most violations of freedom of association are directed against trade unions, the fundamental importance of the right to organize for employers' organizations should be stressed. A restriction on this right was the subject of a complaint by the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS) to the Committee on Freedom of Association in 1995. It concerned the unfavourable treatment in Venezuelan legislation of employers' organizations – and indeed trade unions – by comparison with that of other types of voluntary association. While in this case the Government set up tripartite machinery to examine the Committee's recommendations for legislative change, a more general problem persists in transition countries with little prior experience of the role of employers' organizations in a market-based economy. In many of these countries the development of strong and independent organizations is a necessary precondition for the consolidation of meaningful processes of social dialogue and collective bargaining above the level of the enterprise.

Restrictions on federation activities and international affiliation

80. Freedom of association extends to the right of first-level organizations to form and join federations and confederations, and of all national organizations to affiliate internationally, and to enjoy the full benefits of such affiliation. While such rights at a

[8] Essential services are those whose interruption would endanger the life, health or personal safety of all or part of the population. For further details see ILO: *Freedom of association and collective bargaining*, General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948, and the Right to Organize and Collective Bargaining Convention (No. 98), 1949 (Geneva, ILO, 1994) and reports of the ILO Committee on Freedom of Association.

national or federation level are generally respected, there are a number of restrictions on the rights of workers' organizations to engage in certain forms of activity, such as strikes. In addition, international affiliation has on occasion been subjected to restriction or to prior government approval for some or all categories of workers (e.g., *Cameroon, China, Nigeria, Swaziland*), and obstacles imposed on the receipt by organizations of assistance from international sources. The internationalization of the economy underscores the need for these remaining limitations to be removed.

Importance of freedom from reprisal

81. Meaningful exercise of the right to organize clearly has to be assured not only through a legal provision of this right, but also by the necessary measures to ensure effective protection against anti-union discrimination and employer interference. Workers who live in fear of being subjected to measures of reprisal because of their trade union membership or affiliation cannot be said to have true freedom of association. They can really only act with free choice when they are firmly convinced that sufficient and effective measures exist, including penalties and effective remedies, to ensure respect for their rights. Several Governments reporting under the Declaration Follow-up have provided extensive descriptions of mechanisms established in their countries for the enforcement of legislation concerning the exercise of freedom of association (e.g., *Canada, United States*).

Lack of protection in practice

82. After the denial of civil liberties, acts of anti-union discrimination have in the past five years accounted for the largest percentage of types of allegations examined by the Committee on Freedom of Association. In 1999 alone, the Committee on Freedom of Association made recommendations to redress acts of anti-union discrimination in respect of nearly half of the cases examined. Recommendations and/or review of Follow-up measures taken in respect of anti-union discrimination in that year concerned developed and developing countries alike (e.g., *Argentina, Bahrain, Bangladesh, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Djibouti, El Salvador, Ethiopia, Gabon, Guatemala, India, Japan, Mexico, Morocco, Nicaragua, Panama, Peru, Philippines, Poland, Senegal, Ukraine, United Kingdom, Venezuela, Zimbabwe*). Even in those countries where legislation ensures the basic rights of freedom of association, the actual respect for that right may fall short in practice.

Efforts made

83. Efforts have been made by a number of countries having ratified Convention No. 98, which calls for adequate protection against acts of anti-union discrimination. A number of legislative amendments have been adopted in this respect, in some cases providing for the imposition of administrative or penal sanctions (e.g., *Austria, Cape Verde, Costa Rica, Dominican Republic, Finland, Gabon, Guatemala, Paraguay, Poland*).

The role of advocacy and protective measures

84. The widespread existence of anti-union discrimination, sometimes in defiance of legislation, bears witness to the fact that significant numbers of actors continue to believe that their own interests lie in obstructing full exercise of the right to organize. It is an important role of advocacy to break this short-term perspective. A climate of hostility is likely to have a chilling effect on an organization which formal protective measures cannot easily remedy. Equally, protective mechanisms should be expeditious to have real deterrent effect. Formalities which drag on for years, and sanctions which do not exceed the perceived material gains from defiance of the right to organize, are inadequate to the task. As noted by the *United States* in its annual report under the Declaration Follow-up, the time required to resolve some disputes can undermine the right to organize and meaningful collective bargaining.

Export processing zones – A special case

85. While the legislation in some countries excludes workers in export processing zones (EPZs) from relevant provisions on freedom of association (e.g., *Bangladesh, Pakistan*), the labour and industrial relations legislation in most EPZ-operating countries is applicable to the zones. Despite this relatively positive

picture, the severe restrictions on organizational rights in EPZs in practice give rise to the questions of why zone managers are hostile to unions and what additional efforts are needed to ensure that workers in these zones may organize and engage in collective bargaining.

Innovative approaches to EPZs

86. Examples of anti-union acts on the part of employers in EPZs, including harassment, blacklisting and massive dismissals, are found in a number of cases examined by the Committee on Freedom of Association in the last decade (e.g., *Dominican Republic, Pakistan, Philippines, Sri Lanka*). The reasons for these developments are similar to those given above in respect of the globalizing economy and the perceived need for greater control in determining workplace terms and conditions which are geared to production and competitiveness. Particularly in light of the sometimes legally and geographically isolated nature of EPZs, special measures may need to be taken to ensure greater respect for freedom of association. In this respect, the measures taken by the *Dominican Republic* to set up a specialized unit in the Labour Inspectorate to protect freedom of association in the zones is a positive example for improving labour relations and the conclusion of collective agreements. The decisions by *Namibia and Zimbabwe* to repeal prior legislative provisions that restricted freedom of association in EPZs have also sent a positive signal.

External interference in organization activities

87. In addition to ensuring adequate protection against acts of discrimination, workers' and employers' organizations should be free to undertake legitimate activities without any external interference in their internal affairs. Their programmes and activities should be decided exclusively by their members and reflect their views and interests. The organizations themselves have a duty to ensure that internal democratic mechanisms operate properly to give effect to this principle. Organizations that are under the control of political parties, responding to their decisions instead of listening to their own members, fall outside the scope of the principles of freedom of association.

Legitimacy of trade union concern about national policy

88. It is important to acknowledge the full legitimate scope of the activities of workers' and employers' organizations. They may, with full justification involve themselves in questions of general economic and social concern which go beyond the immediate occupational concerns of their members, but still impact upon their lives and interests. In so doing these organizations may engage in political activity, on condition that this does not compromise their representational and social and economic functions. Despite these considerations there are a significant number of countries which explicitly prohibit political activity by trade unions (e.g., *Azerbaijan, Ecuador, Kuwait, Lebanon, Malaysia, Swaziland*).

Excessive supervision of organizations

89. The public authorities naturally retain the right and the responsibility to ensure that workers' and employers' organizations operate according to accepted standards of financial probity and in respect of their own rules. In this regard no distinction is to be made between these organizations and any other voluntary association. Problems can arise, though, when allegations of financial irregularity or other failures to apply constitutional provisions are used as the pretext for interference in workers' or employers' organizations, sometimes with a view to incapacitating their legitimate leadership or suspending their activities. The gravity of these instances shows just how important it is that supervision be restricted to the level required to guarantee proper standards of administration; if intervention is required, it should be through appropriate judicial channels.

Employer interference and "Solidarismo"

90. Another blatant form of interference may occur when a workers' or an employers' organization comes under the influence or domination of an external actor. Employer-dominated trade unions are a case in point. They cannot

represent the workers concerned, nor can they be counted as an expression of freedom of association. The case of solidarist associations, principally in Costa Rica but also in other Central American countries, illustrates the need to safeguard the independence of workers' organizations and to protect them from interference. These associations, set up initially for welfare purposes, are dependent upon financial contributions from employers; consequently, they may become involved in the determination of terms and conditions of employment in a manner detrimental to independent workers' organizations and to collective bargaining. Their activities have also been linked to acts of discrimination aimed at ending union representation.

Collective bargaining: Expressing collective voice

Collective bargaining rights – key to effective representation of interests

91. The right to organize is essential to the collective representation of interests, and realization of the right to collective bargaining is the key to making this representation effective. In a general sense the outcomes of collective bargaining generate the added value of organization. The previous chapter has argued that collective bargaining plays an important role in enhancing enterprise performance and the capacity to manage change. Similarly, it has highlighted the contribution of social dialogue to broader economic and social policy goals. These considerations add to the fundamental importance of collective bargaining in generating fair distributional results for those within its scope, and in redressing the inherent asymmetry of the employment relationship.

Voluntary negotiations need an appropriate promotional framework

92. Figure 1.4 shows that collective bargaining coverage varies considerably between countries, and is often very low. Why is this so, and what can be done to promote the effective realization of the right to collective bargaining? The belief that collective bargaining would generate outcomes which are less than optimal for enterprise performance, or which do not fit with broad economic policy objectives, often underpins efforts to restrict the exercise of the right to collective bargaining. Indeed, collective bargaining is by its very nature a voluntary process, although national legislation may mandate bargaining with partners who can demonstrate a given level of representativeness. While recognizing the voluntary nature of collective bargaining, it is incumbent on member States to encourage and promote the full development of machinery for voluntary negotiation. Some countries completely lack appropriate measures in this regard (e.g., *Cape Verde, Democratic Republic of the Congo, Iraq, Rwanda*). When establishing such machinery, attention should be focused on ensuring that bargaining is conducted in good faith and between representative independent organizations.

The specific exclusion of certain categories of workers from these rights

93. It is self-evident that where the right to organize is denied, the full realization of the right to collective bargaining is by definition impossible. However, there are other situations in which bargaining rights are denied to categories of workers who can, nevertheless, organize for other purposes. On the positive side, significant progress has been achieved in the lifting of restrictions on, for example, the right of civil servants to engage in collective bargaining (e.g., *Ethiopia, Greece, Guatemala, Paraguay, South Africa, Uganda*). On the other hand, the categories which continue to be denied collective bargaining rights (e.g., significant categories of public servants – *Albania, Bolivia, Brazil, Canada, Costa Rica, Colombia, El Salvador, Gambia, Kenya, Iraq, Lebanon, Liberia, Libyan Arab Jamahiriya, Morocco, Panama, Turkey;* teachers – *Ecuador, Uganda;* teachers with civil service status – *Germany;* agricultural workers – *Jordan, Libyan Arab Jamahiriya;* domestic workers – *Bahamas, Brazil,* some jurisdictions of *Canada, Jordan, Kuwait* and *Lebanon;* seafarers – *Libyan Arab Jamahiriya*; workers in EPZs –*Bangladesh, Pakistan*) are generally those that also suffer restrictions on the right to organize. It may be supposed that the justifications are analogous in both cases.

Interference in the bargaining process

94. More prevalent, however, are situations in which bargaining is permitted, but where its outcomes are required to conform to certain externally imposed criteria. Such intervention may in the most acute cases actually lead to the suspension of collective bargaining, and the unilateral determination of terms of employment by legislation. The public sector is most prone to this type of action, which may be taken under pressure of government- spending constraints, with an eye to meeting other macroeconomic targets such as inflation reduction, or simply in an effort to set a going rate in the economy as a whole. Countries which are experiencing structural adjustment programmes may come under particular pressure in this regard, and find that the results of free collective bargaining would be difficult to reconcile with borrowing conditionalities. While there will be exceptional circumstances of economic difficulty which can legitimate this type of interference in the normal conduct of bargaining, these must be limited to what is absolutely necessary and accompanied by safeguards for those affected.

Some cases of progress ... but more efforts needed

95. In this respect, legislative measures taken to protect against interference in the collective bargaining process over recent years must be welcomed (e.g., *Belgium, Poland, Portugal, Romania, Uganda*). Yet, permanent provisions that require government approval as a precondition for agreements to come into effect or that require conformity with the national interest (e.g., *Argentina, Brazil, Egypt, Libyan Arab Jamahiriya, Papua New Guinea, Syrian Arab Republic, Yemen*) cannot be considered to go hand-in-hand with full respect for collective bargaining rights.

Level of bargaining

96. The level at which bargaining occurs and at which agreements apply should be a matter for the bargaining partners themselves to determine. The practice in this regard varies widely between the ILO's different member States, and responds to national history, circumstances and preferences. No model can be considered inherently superior to another and many combine different levels of negotiation. And yet, as highlighted in Chapter 1, there is much debate about the economic consequences of the level at which bargaining takes place, with arguments being increasingly advanced in favour of decentralization. These stress that lower-level bargaining, particularly bargaining at the workplace or enterprise level, is better able to reflect the economic realities of those covered and to make a link between performance and reward which encourages competitiveness and reflects market forces. By contrast, more centralized models are viewed as embodying labour market rigidities and as generating outcomes that are unhelpful to employment, and enterprise success, and even unfair to the workers concerned.

Autonomy of the parties to set the framework

97. Whatever the merits of these contentions, the voluntary nature of collective bargaining makes it axiomatic that the level at which it is carried out should likewise be the result of a freely entered into agreement. Governments should not enact such restrictions on the right to collective bargaining and they should not be influenced by external actors to do so. Nor should it be forgotten that the choice of negotiating level may have direct consequences for the relative strength of the bargaining partners. Workplace or enterprise bargaining may place workers' organizations at risk from undue employer influence or undermine the leverage that they can bring to the negotiating table.

Individual agreements versus collective bargaining

98. A more fundamental challenge to present-day collective bargaining, though, comes from the trend towards individualization of the determination of terms and conditions of employment. Employers may see no reason to do otherwise, particularly when their employees do not demonstrate active interest in collective representation. They may see it as a way of rewarding individual merit and skills, and in attracting high-quality recruits. Some human resource management techniques may indeed encourage this approach as the most appropriate way of promoting enterprise competitiveness. On the other hand, such individualization

brings back into play the inherent inequality of the employment relationship with the attendant risk of depressing terms and conditions of employment, as well as opening the way to possible discriminatory or arbitrary treatment. It is against this background that some Governments (e.g., *Australia*, *New Zealand*) appear to have taken the view that their responsibility is limited to ensuring that those concerned be left to decide for themselves if they wish to act on an individual or a collective basis. The New Zealand Government has indicated, however, that it is now proposing legislation to promote collective bargaining.

Need for promotional action

99. When looking at collective bargaining rights as a whole it is important to emphasize that, notwithstanding the voluntary nature of collective bargaining, governments can be highly influential – both through legislation and through provision of supportive institutions – in promoting collective bargaining. A number of government reports under the Declaration Follow-up described the important role played by the dispute resolution services offered by the labour authorities (e.g., *Brazil*, *Canada*, *Kenya*, *El Salvador*, *Malaysia*, *Uganda*, *United States*), although in some cases they may not always operate in full conformity with ILO principles. Some countries provide support for collective bargaining by maintaining public databases on agreements concluded (e.g., *Canada*), thus serving as a valuable information source for the social partners. Several member States maintain statistics on the number and types of collective agreements, as well as their coverage (e.g., *Brazil*, *Lebanon*, *Mexico*). Finally, many governments have already received ILO training in relation to collective bargaining (e.g., *China*), and dispute prevention and settlements (e.g., *Lesotho*, *Namibia*, *South Africa*), and many have expressed a desire for such training for themselves as well as for the social partners (e.g., *Democratic Republic of the Congo*, *Eritrea*, *Kenya*, *United Republic of Tanzania*).

100. The need for promotional action in respect of collective bargaining is all the more evident given contemporary labour market developments. For instance, the increasing fragmentation of labour markets; the fact that more people work in numerically small units; the emergence of a new economy in which there is little tradition or practice of bargaining; as well as the growth of the informal economy and outsourcing and similar arrangements which are edging out the standard employment relationship, all pose challenges to the realization of the right to collective bargaining.

The right to strike as a tool of last resort

101. The right to strike is the logical corollary of the effective realization of the right to collective bargaining. If it does not exist, bargaining risks being inconsequential – a dead letter. It is also a right which is designed to be used only as a last resort when the bargaining process, and existing mediation and conciliation mechanisms, have failed. Strikes are costly to all concerned: to workers, to employers, to governments and to the general public. It is in the obvious interest of all these groups to try and find solutions short of strikes. But the fact that strikes, by definition, take place in situations of conflict and that they can cause major inconvenience, should not detract from the need to respect and safeguard the rights on which they are founded.

Permissible restrictions and compensatory safeguards

102. While the right to withdraw labour in pursuit of legitimate interests is well established, the principles of freedom of association clearly set out the parameters within which it may be exercised. They do not encompass essential services whose interruption would threaten the life, personal safety or health of all or part of the population, nor public servants engaged in administration of the State; neither do they cover situations of national emergency. In all these cases, though, it is important that those denied the possibility of engaging in industrial action have access to compensatory safeguards.[9]

[9] For details, see *Freedom of association*, 1994, op. cit.

Restrictions on the right to strike

103. Nevertheless, the right to strike remains subject to wide restrictions. The most blatant are those where there is a general strike prohibition or where the absence of any express provision in law recognizing the right to strike has led to denial of this right in practice (e.g., *Liberia, Myanmar, Saudi Arabia*). Other restrictions arise from situations in which disputes are subject to compulsory, binding arbitration, or can be referred to such arbitration at the request of the public authorities or a single party, thus pre-empting any possibility of resort to industrial action (e.g., *Algeria, Bolivia, Canada, Egypt, Guinea, Guyana, Honduras, Jamaica, Mali, Malta, Mauritania, Norway, Peru, Romania, Senegal*). Some restrictions result from an overly broad definition of essential services which, in practice, deprives non-essential sectors of the right to strike (e.g., *Azerbaijan, Belarus, Colombia, Costa Rica, Lithuania, Pakistan, Zambia*). Other problems arise from restrictions on the issues over which strike action may be taken. There are frequent restrictions on secondary or solidarity action (e.g., *Australia, Bolivia, Congo, Paraguay, Turkey, United Kingdom, Zambia*) and strikes called by federations or confederations or protest strikes (e.g., *Bolivia, Ecuador, Honduras, Nicaragua, Swaziland*). In other countries, some categories of employees may not engage in strikes (e.g., various groups in the *Islamic Republic of Iran*, teachers in the *Republic of Korea* and most federal and state employees in the *United States*). The internationalization of production and the increasing prevalence of long and complex supply chains may throw some of these points into sharper relief in the years ahead.

Strike action at extreme cost

104. Participation in strike action may also have severe consequences. Where strike action is illegal it can be subject to severe penal sanctions (e.g., *Algeria, Azerbaijan, Barbados, Ecuador, Guatemala, Lithuania, Pakistan, Philippines, Romania, Swaziland, Syrian Arab Republic, Zambia*). In addition, and regardless of the legality of their action, strikers are frequently dismissed (e.g., in 1999 alone, the Committee on Freedom of Association examined cases of dismissed strikers in respect of: *Brazil, Bulgaria, Cambodia, Colombia, Djibouti, Gabon, Mexico, Nicaragua*). In some countries, legislation provides for or permits the replacement of strikers (e.g., *Burkina Faso, Cape Verde, Central African Republic, Djibouti, Madagascar, Niger, United States*).

Conclusions

105. *Freedom of association is to be enjoyed by all workers and employers.* Yet major gaps in the exercise of freedom of association and the right to collective bargaining persist. Workers in many parts of the world are either denied the right to form and join a trade union, or are working in situations where these rights are significantly curtailed. In some countries, independent employers' organizations still face barriers to exercising their freedom of association. Despite the universality of these rights and their distinction as key civil liberties, we are in fact still a long way from universal acceptance of these fundamental principles and rights in practice. Governments, as guardians of democracy, need to do more than pay lip service to freedom of association and the right to collective bargaining. It is in their own interest to do so. The ILO is – and has always been – ready to help governments give effect to these fundamental rights and principles at work, and the Follow-up to the ILO Declaration provides new impetus to encouraging efforts in this direction. We shall next turn to looking at the ILO's experience so far in providing such assistance.

Part II: Assessing the effectiveness of the assistance provided by the ILO

3. Your voice at work and the role of the ILO

Introduction

106. Through its experience, the ILO can ascertain that a range of approaches and techniques are necessary to ensure the effective implementation in law and practice of principles of freedom of association and the right to collective bargaining. Some of these mechanisms are purely promotional, whilst others, like the supervisory machinery of the ILO, tend to be more normative. This chapter assesses the effectiveness of ILO assistance in enabling the social partners to make progress towards respecting, promoting and realizing these rights. It also draws a number of lessons that should inform future priorities and work.

ILO means of action: Multiple situations call for multiple tools

Supervisory mechanisms

107. Even prior to the adoption of the Declaration, the ILO was uniquely positioned in the international system to promote the realization of the principles of freedom of association and the effective recognition of the right to collective bargaining. Indeed, it had an oversight of those States that had ratified the relevant Conventions, as well as those that had not, through the Governing Body Committee on Freedom of Association. Box 3.1 provides an overview of the ILO supervisory system. The OECD (1996) study on trade, employment and labour standards recognized that the Committee on Freedom of Association was one of the most important procedures of the ILO, acknowledging that it had been particularly effective in cases of blatant violations of freedom of association, in particular anti-union discrimination.[1]

[1] See OECD: *Trade, employment and labour standards: A study of core workers' rights and international trade* (Paris, 1996). OECD has been working on an update of this study.

Box 3.1
An overview of the ILO supervisory system

ILO enforcement of labour standards includes regular and special supervisory systems as well as ad hoc measures:

Regular supervisory system: Based on ratification of Conventions and regular periodic reports on measures taken to give effect to various provisions, reviewed by an independent **Committee of Experts** on the Application of Conventions and Recommendations. The Experts' reports are the subject of tripartite discussion at the annual **International Labour Conference Committee on the Application of Standards**.

Special systems of supervision: Article 24 representation procedures – workers' and employers' organizations can communicate difficulties in the application of ratified Conventions for examination by either an ad hoc tripartite committee set up by the Governing Body or by the Committee on Freedom of Association where the representation concerns freedom of association principles.

Article 26 complaint procedures – ratifying member States or delegates to the International Labour Conference may file complaints concerning the non-application of ratified Conventions. The Governing Body determines whether to appoint an independent Commission of Inquiry to investigate the allegations. The whole procedure can also be initiated by the Governing Body.
Freedom of association complaint procedures – complaints may be submitted by concerned workers' or employers' organizations or by governments for examination by the Governing Body Committee on Freedom of Association, whether or not a member State has ratified. In certain cases, the Governing Body may also decide to establish a Fact-finding and Conciliation Commission.

Ad hoc measures: Can involve undertaking direct contacts related to issues raised by ILO supervisory bodies (as done, for example, in cases of infringement of freedom of association principles) or the good offices of the Director-General.

Direct value of the supervisory system

108. The Committee of Experts on the Application of Conventions and Recommendations (CEARC) – a group of independent experts which regularly and systematically monitors the implementation of ratified Conventions – was able to note 18 cases of progress concerning respect for freedom of association and collective bargaining in its report for 1999. While five of these cases can be linked to ILO action and assistance within the country, the other cases of progress result directly from the dialogue established between the Committee and the governments concerned. During the period from 1971 to 1999, the CEARC noted 170 cases of progress in relation to the application of Conventions Nos. 87 and 98.

Ensuring fuller application of the relevant Conventions

109. The independent supervisory role of the Committee of Experts is corroborated every year by the review and public debate of the most serious cases by the tripartite Conference Committee on the Application of Standards. Discussion in the Conference Committee and the obligation upon governments to indicate the measures they have taken to ensure full application of the relevant Conventions have often led to political openings for ILO technical cooperation and assistance described below.

Recommendations taken up

110. At its three meetings in 1999, the tripartite Governing Body Committee on Freedom of Association – which examines complaints of infringements of trade union rights regardless of the ratification of relevant freedom of association Conventions – noted 16 cases of progress. A review of Follow-up by the Committee showed 150 cases of progress in respect of 70 countries since 1971. Positive trends in the 1990s demonstrate a greater impact in that decade than in all previous years of the Committee's existence.

Box 3.2
Republic of Korea – An innovative approach to opening dialogue

In a long-pending case against the Republic of Korea, the Committee on Freedom of Association invited the Government to accept a high-level tripartite ILO mission in an unprecedented attempt to foster and encourage a positive and constructive dialogue. This mission visited the country in February 1998 and, while a number of issues have still to be resolved, significant progress has been made – including the registration of formerly banned trade unions.

Progress may be slow

111. However, there have also been cases – whether these have been before the Committee on Freedom of Association, the Committee of Experts or in the process of being handled by a Commission of Inquiry (a constitutionally established ad hoc body of independent experts with investigative powers) – which have generated little progress despite their having been under examination for a prolonged period of time. These have generally been instances when political will has not been forthcoming, making it difficult for the ILO to follow up the recommendations of the supervisory bodies. In some cases, it has not been possible to have meaningful dialogue with the government concerned, and access has even been denied to ILO missions. Perseverance in attempts at real dialogue, as well as other avenues of promotion available to the ILO, have often proved to be crucial in achieving a breakthrough in these cases.

Securing political commitment to respect freedom of association and collective bargaining rights

112. The supervisory mechanisms have had value in encouraging political will. They have often been instrumental in raising awareness of the conditions in certain countries which has led, in some cases, to pressure being brought to bear by other member States. This pressure has often been a key factor in opening the door for technical cooperation and assistance to remedy a particular problem, generally leading to better acceptance and understanding of the fundamental principles and rights at work.

Advocacy and awareness raising

113. Part of the key to promoting fundamental principles and rights lies in advocacy and awareness-raising measures. The supervisory mechanisms outlined above depend greatly upon the extent to which the social partners make use of them. The ILO has numerous activities, seminars, workshops and publications aimed at informing those concerned of their rights and options for redressing any violations (box 3.3 and box 3.4). National, subregional and regional tripartite seminars often provide the necessary forum to facilitate social dialogue on these issues and an exchange of opinions and experiences. The sharing of information among occupational organizations has also assisted in support actions across borders.

Box 3.3
National tripartite seminars on Conventions Nos. 87 and 98

Obstacles to ratification of certain freedom of association Conventions were recently discussed in national tripartite seminars in **Brazil, India, Madagascar, Mauritius** and **Morocco,** providing the Governments and the social partners with an occasion to debate the relevant issues in a forum where ILO experts could directly address concerns raised.

Two East African tripartite seminars (one in 1997, followed up in 1998) aimed at identifying the substantive and technical difficulties impeding ratification of Convention No. 87 by **Kenya, the United Republic of Tanzania** and **Uganda.** In the interval between the two seminars, significant legislative amendments had been drafted. The United Republic of Tanzania has reported that it is conducting consultations with the social partners regarding ratification of Convention No. 87. Kenya and Uganda have indicated in their reports under the Follow-up to the ILO Declaration that they are still reviewing outstanding impediments to ratification and technical cooperation proposals to reform the labour law with ILO assistance have been submitted to the UNDP.

Box 3.4
Publications and media

As part of an awareness-raising training and with a view to making the evolving and complex jurisprudence of the supervisory bodies more accessible, the ILO recently released new publications on freedom of association and collective bargaining.[2] Furthermore, a special series of the *International Labour Review* was dedicated to freedom of association in the 50th anniversary year of Convention No. 87. The websites developed for standards and fundamental principles and rights at work and the InFocus Programme on promoting the Declaration provide a wealth of information on the implementation of fundamental principles and rights at work (see http://www.ilo.org).

Advisory services and in-country contacts

114. While a "paper dialogue" is sometimes sufficient for progress to be made in the achievement of greater respect for fundamental principles and rights at work, advisory services are, in many cases, crucial to the successful reform of law and practice. Technical, advisory or direct contacts missions may be helpful in identifying and assessing the problems and facilitating the search for solutions within the national context (box 3.5). Government consent is, of course, essential for such missions in so far as they are undertaken with the aim of working in close cooperation with all concerned parties. Another common form of assistance is the furnishing of an analysis of and advice on legal drafts (box 3.6). The ILO also provides comparative knowledge in respect of social institutions, representation questions and other information which has been solicited by developing and developed countries alike.

Box 3.5
Recent direct contacts missions

Direct contacts missions, often including a representative of the Director-General from outside the Office, have come about in recent years as a result of requests within the context of various ongoing procedures.

In 1998, the Governing Body called for a direct contacts mission to **Nigeria**, despite its having already appointed a Commission of Inquiry, as an opportunity to respond to recent, positive developments in the country – in particular the release of detained trade union leaders. Important changes to the labour legislation followed. The progress noted by the mission and subsequently by the various supervisory bodies resulted in the Governing Body deciding not to proceed with the Commission of Inquiry.

A direct contacts mission to **Swaziland** came about in response to the Government's invitation to the ILO in 1997, to review its country's situation following serious complaints to the Committee on Freedom of Association and tense discussions at the Conference Committee on the Application of Standards. Legislation subsequently drafted with ILO technical assistance, taking into account the recommendations of the supervisory bodies, has passed the Parliament and is awaiting the King's royal assent.

This year, a direct contacts mission took place in **Colombia** in response to an agreement between the Government and the Colombian workers' organizations concerned which was placed before the Governing Body during its discussion on the possibility of instituting a Commission of Inquiry in reply to an article 26 complaint. Following the adoption of several decrees concerning freedom of association, a high-level mission was sent to **Venezuela** in early 2000 to consult with all involved parties on the serious concern raised by these decrees and to advise on possible modifications. A complaint has been filed before the Committee on Freedom of Association alleging the serious infringements of trade union rights implied by these decrees.

[2] D. Tajman and K. Curtis, op. cit.; B. Gernigon, H. Guido and A. Odero: *Collective bargaining: ILO standards and the principles of the supervisory bodies* (Geneva, ILO, 2000). B. Gernigon, H. Guido and A. Odero: *ILO principles concerning the right to strike* (Geneva, ILO, 2000). ILO: *Freedom of association: An annotated bibliography* (Geneva, 1999).

Box 3.6
Advice on labour law reform

According assistance to governments on the "framing of laws and regulations ... on the basis of the decisions of the Conference" is a core activity of the ILO (Constitution, article 10(2(b)). This assistance ranges from providing comparative information to constituents to making comments on draft legislation and drafting legislative proposals. The ILO urges governments to seek tripartite consensus on labour law revision proposals, and its drafting work involves extensive consultations with the social partners as a basis for sustainable reform.

Multidisciplinary team specialists, headquarters officials and ILO consultants with practical experience provide assistance in revising legislation to respond to new labour market developments while preserving respect for fundamental principles and rights at work and ratified Conventions. The ILO has often acted as a facilitator in tripartite workshops on labour law reform, with an emphasis on freedom of association and collective bargaining (e.g., in **Albania, Czech Republic, Estonia, and Lithuania**). A joint ILO-World Bank tripartite seminar on labour law reform in French-speaking Africa held in Abidjan in 1997 helped the national participants and the staff of both institutions better understand the economic and labour standards perspectives.

Currently, labour law reform projects are being launched in the **Central African Republic, Colombia, Kenya, Saint Lucia** and **Uganda** and are under discussion elsewhere. In the past few years, the ILO has furnished substantial support for amending legislation relating to freedom of association and collective bargaining in **Bolivia, Guatemala, Indonesia, the Lao People's Democratic Republic, Lesotho, Mauritius, Namibia, Nepal, Philippines,** and **Swaziland**, and has supplied extensive comments on draft legislation dealing with these topics in many countries (e.g., **Belarus, Bosnia and Herzegovina, Botswana, Cambodia, Central African Republic, Ghana, Islamic Republic of Iran, Fiji, Kazakhstan, Thailand, Ukraine**), and draft model laws for the **Caribbean Community** (CARICOM). In others, such as **Chile, Kenya, the United Republic of Tanzania and Uganda**, it has provided comparisons of national legislation and Conventions Nos. 87 and/or 98.

In addition, governments have called upon the ILO to comment on labour law proposals put forward by consultants financed by the World Bank and regional development banks (e.g., **Bosnia and Herzegovina, Guinea, Former Yugoslav Republic of Macedonia**). This experience has highlighted the importance of heightening awareness across the multilateral system of how respect for freedom of association and the right to engage in collective bargaining can be guaranteed under legislation.

Training of social partners and institution building

115. Training has been an invaluable means of strengthening the capacity of the social partners to carry out their representation functions and to ensure adequate resourcing of the collective bargaining process (box 3.7). This training has included workshops on organizational techniques, internal administration, collective bargaining, negotiation skills, mediation and dispute resolution skills, etc. To support these activities the ILO has developed training manuals (for trainers, negotiators and grievance handlers) now available in English, French and Spanish. A trainer's manual on dispute prevention and resolution has also been developed.

Box 3.7
An example of institution building

In Asia, the ILO conducted a series of education and training programmes in **China, Cambodia, the Lao People's Democratic Republic, Mongolia** and **Viet Nam**. These programmes focused on capacity building for trade unions in organizing, collective bargaining and grievance handling.

Some selected case-studies

Democratization and economic transition

116. The assistance that the ILO has provided to promote the realization of the principles of freedom of association and the effective recognition of the right to collective bargaining has often gone hand in hand with democratization and economic transition. The ILO has intervened following complaints, as a result of a direct request for assistance, or on its own initiative, to promote these principles and rights. Experience has shown that through continued assistance and commitment, dramatic changes are possible in the realization of the principles of freedom of association and collective bargaining in situations where they have been subject to long-standing and serious abuse.

> **"There are three important elements [...] namely the political will and commitment of the Government, the effectiveness of ILO technical assistance and the effectiveness of *tripartism and social dialogue*".**
>
> *H. Bomer Pasaribu, Minister of Manpower of Indonesia, ILO/Japan/United States Regional Seminar on the ILO Declaration, Phnom Penh, 7-9 December 1999.*

The case of Indonesia: Economic crises and political transition

117. One recent relevant example of ILO assistance is that of **Indonesia**.[1] Whilst there are outstanding issues in that country regarding the full implementation of these principles and rights, considerable progress has been achieved in a relatively short period as a result of political commitment from the Government, multifaceted ILO technical assistance and social dialogue.

Tackling abuse of fundamental rights

118. Although the ILO's involvement in Indonesia was initially complaints-driven, its assistance took a different turn following significant economic and political events in that country during the 1997-98 period. The initial complaint presented to the Committee on Freedom of Association in 1994 alleged very serious infringements of trade union rights: murder, disappearance, arrest and detention of trade union leaders and activists; denial of the right of workers to establish organizations of their own choosing; interference by government authorities, the military and employers in trade union activities; acts of anti-union discrimination; and restrictions on strike action and collective bargaining.

New political developments

119. The financial crisis that began in 1997 brought about major political change and a new approach towards human rights, basic freedoms and democratic processes. A significant development was the general acceptance of freedom of association and the release of jailed union leaders.

Agenda for action

120. These changes opened the door to the promotion of fundamental principles and rights at work, and they provided the opportunity for Indonesia to make effective use of ILO assistance and collaboration. Concerned with sustaining national coherence, the framework of reform in the labour field started with the recognition of the need for work on several fronts, in particular the broad areas of employment and of labour protection. To this end, Indonesia has been working with a number of partners, including the World Bank, UNDP, bilateral donors and the ILO (with past funding from France and the Netherlands).

Consolidation of reforms

121. A direct contacts mission took place in August 1998 at the request of the Conference Committee on the Application of Standards. The ILO started to provide advice and assistance on the new labour law framework, in the light of the recommen-

[1] For a detailed description of ILO assistance in this context, see: *Demystifying the core Conventions of the ILO through social dialogue: The Indonesian experience*, ILO, Jakarta Office, 1999.

dations of this mission. The efforts by the tripartite constituents and the ILO have extended beyond the traditional ILO constituents, including the military and the police force, women's groups and non-governmental organizations. A project (funded by the United Kingdom) to strengthen trade unions eased the transition process.

Ongoing support

122. The most recent advisory mission from the Office (prior to the conclusion of this Report) took place in January 2000. In early March 2000, a national tripartite workshop took stock of the situation and agreed on action over the next two years. Wide-sweeping changes have deepened democracy: the ratification of Convention No. 87, the release of union activists from prison, the registration of numerous new trade union federations, discussion and debate about labour reforms and accompanying training and other support measures, and tripartite involvement in the formulation of new labour laws. All are important building blocs in the consolidation of democracy in Indonesia.

Lessons learned

123. A number of lessons may be drawn from the experience in Indonesia:

- First, given the context of the financial crisis, the international financial institutions played a significant role in opening the door to the reform process.
- Second, the reform agenda in Indonesia was driven by a combination of political and economic considerations, leading into the elections of 1999. Coordinated efforts for rights-based institutional reform and developmental activities (poverty eradication, employment creation, a newly conceived role for the military and the police) have a crucial role to play.
- Third, Indonesia used the ratification of ILO Conventions pertaining to fundamental principles and rights (including Nos. 87 and 98) as leverage for domestic labour reforms.
- Fourth, whilst the ILO has made a significant contribution to the process of legislative reform, the actual drafting of the legislation has been the responsibility of the Government, working with an active tripartite Committee. The Department of Manpower and the employers' and workers' organizations have taken ownership of the proposed legislation, thus providing powerful support for its passage through Parliament and subsequent effective implementation.
- Fifth, although the dimension of political and economic changes has been enormous, the impact of these changes will take time to work through the system and requires the ongoing commitment of the ILO and other agencies.

The case of South Africa: Ushering in a new democracy

124. ILO activities in respect of **South Africa** illustrate similar points. Spurred by long-standing criticism and condemnation, South Africa withdrew from the ILO in 1964.[4] That same year, the ILO adopted the *Declaration concerning action against apartheid*,[5] which stated that the Office would provide assistance to liberation groups, black workers and their independent trade unions. Study visits were organized for South Africans at ILO headquarters or in selected Southern African countries to enable them to become acquainted with workers' education programmes. Seminars and workshops were held in neighbouring countries on subjects such as freedom of association, collective bargaining, employment and development, safety and health and media skills and information technology. This was an example of a situation in which assistance to democratic employers' and workers' organizations could be provided even when cooperation with the apartheid regime was out of question.

Maintaining political pressure for change

125. Every year from 1965 to 1994, a *Special Report of the Director-General on the application of the Declaration concerning action against apartheid* was submitted to the Inter-

[4] The implications of this withdrawal were that, as far as supervisory procedures were concerned, complaints of violations of freedom of association and collective bargaining were subject to a special procedure, involving referral to the Economic and Social Council of the United Nations (ECOSOC).

[5] The Declaration was adopted in 1964 and updated on several occasions.

national Labour Conference, initially for discussion in the plenary and, from 1980 onwards, in a Conference Committee on Apartheid. This kept up the political pressure on the apartheid regime in the ILO's unique tripartite forum.

ILO assistance to reform process

126. In 1989, the Congress of South African Trade Unions (COSATU) filed a complaint alleging various infringements of freedom of association. In February 1991, as the political tide was beginning to turn, the Government consented to the establishment of an ILO Fact-finding and Conciliation Commission on Freedom of Association. The Commission made a number of recommendations to bring the laws, policies and practice in that country into conformity with the principles of freedom of association, including the establishment of a (tripartite) National Manpower Commission and extensive legislative amendments and labour market policy reform. With the advent of the post-apartheid Government, the Governing Body and the Conference adopted a plan of action that included the promotion of trade union and human rights, capacity building for employers and workers, labour relations and collective bargaining, and improvement of the labour law to give effect to the recommendations of the Fact-finding Commission. South African legislation was brought into line with the principles enshrined in the ILO Conventions in a process involving local and ILO expertise. South Africa ratified Conventions Nos. 87 and 98 in February 1996.

Building consensus through social dialogue

127. ILO assistance during South Africa's transition to a non-racist democratic order was aimed at consolidating progress made. It included an extensive programme of advice on legislative reform, building collective bargaining and dispute resolution capacity in the private and public sectors (financed by Switzerland) and the strengthening of labour market institutions. This included work with the Department of Labour and the Department of Public Service and Administration. The ILO continues to support the consolidation of these principles and rights in that country – and their effective recognition reflects a remarkable degree of social consensus in the context of a multicultural, multilingual environment. It is also interesting to note that active social dialogue at the national level has enabled South Africa to implement an extensive programme of economic policy reform.[6] Furthermore, the Department of Labour adopted a tripartite approach in a recent review of the labour law reforms that had been introduced.

Lessons learned

128. A number of lessons emerge from the South African experience:

- First, the unique position of the ILO through its special freedom of association mechanisms presented an opportunity for the Organization to support the movement towards full democracy and social justice in South Africa despite an initial lack of political will. The ILO was able to sustain and build the capacity of the social institutions (through study tours and seminars outside of that country), even during the apartheid years. The Conference Committee on Apartheid also played an important role in maintaining international pressure for change and building the basis for reform.
- Second, political will and respect for the important role of social dialogue reinforced the sustainability of the changes made in the social, political and economic spheres.
- Third, the ILO supported the development of the broader labour market policy framework so that the realization of the fundamental principles and rights were underpinned by efforts to redress discrimination and enhance employment opportunities.

[6] See ILO: *Studies on the social dimensions of globalization, South Africa* (Geneva, 1999).

- Fourth, ILO activities and support for reforms have been ongoing in order to facilitate their full and stable integration into overall national policy. The ILO played an important role in resourcing the collective bargaining process through capacity building among the social partners and assistance in the development of dispute resolution activities.

> **" ... there will be no real freedom, democracy or peace without social justice ... there are no genuine freedoms or union rights where there are not human rights in general, where there is not democracy and the rule of law".**
>
> *Lech Walesa, President of Solidarity (subsequently President of Poland) at the 77th Session of the International Labour Conference in June 1990 on the achievements and experience of the ILO.*

The case of Poland: Freedom of association, collective bargaining and the fall of the Berlin Wall

129. **Poland** further demonstrates the dramatic role that ILO action and assistance can play in facilitating not only social but also political change. As early as 1959, the Committee of Experts had pointed out that the 1949 Polish Trade Unions Act was in contravention of Convention No. 87, in particular as regards the right of workers to establish organizations of their own choosing.[7] Following a complaint examined by the Governing Body Committee on Freedom of Association, the Office undertook a mission to Poland in May 1980, meeting with Government, employers' and workers' representatives.

Gdansk agreement opens way to reform ...

130. The social and political situation evolved rapidly during that period, and eventually led to the signing of the Gdansk Agreement, which included the Government's overt acceptance of the principles of Conventions Nos. 87 and 98. In October 1980, the Parliament adopted a new Trade Unions Act allowing trade union pluralism. However, when the new union, Solidarity, could not obtain the registration of its by-laws, the Director-General of the ILO undertook a further mission to Poland to help unblock the situation. In November that year, the Minister of Labour appeared in person before the Committee on Freedom of Association and announced the registration of Solidarity. At the 67th Session of the Conference (1981), Lech Walesa, the Polish workers' delegate, underlined that *"when ... we decided to create independent self-managed trade unions, we used in full the provisions of the ILO Conventions Nos. 87 and 98 ... to strengthen Solidarity"*.

... but martial law blocks progress

131. The situation deteriorated rapidly when martial law was proclaimed on 13 December 1981, suspending trade union activities and dissolving existing trade union structures completely. Measures were taken against Solidarity, its leaders and its members. Complaints of violations of trade union rights were subsequently filed with the ILO by the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL). While the Government initially turned down a proposed mission, the ILO was able to visit Poland, meet with Government and trade union representatives, and visit Lech Walesa in detention following the examination of the case in February 1982.

ILO criticizes Poland

132. A complaint was filed under article 26 of the Constitution for violation of Conventions Nos. 87 and 98 in June 1982. Martial law was suspended on 31 December 1982. However, as the Government refused the terms of reference of a further mission by the ILO, a Commission of Inquiry was appointed by the Governing Body. The Government replied by announcing that it was suspending its cooperation with the ILO. In spite of this, the Commission completed its work

[7] Poland had ratified Conventions Nos. 87 and 98 in 1957.

(including the hearing of witnesses in Geneva) and issued its report and recommendations in May 1984. The Government rejected the Commission's conclusions and recommendations calling for the adoption of legislation compatible with Conventions Nos. 87 and 98, the release of the trade unionists still under detention and the reinstatement of workers dismissed for trade union activities.

Round table discussions and the role of the ILO

133. Despite the close monitoring of the situation by the Committee of Experts, no concrete measures were taken by the Government. In May 1987, the Director-General of the ILO returned to Poland and met with government and trade union representatives, including the leadership of Solidarity, who was still not authorized to operate. Following a new wave of strikes in 1988, the Government agreed to initiate a round table discussion with the social partners on the recommendations made by the ILO Commission of Inquiry. Upon ILO advice, a national tripartite commission was established in January 1989, in part to draft new trade union legislation.

Supporting social dialogue

134. To consolidate reforms in the early 1990s, the Polish Government actively supported social dialogue through a project funded by the European Union and executed by the ILO. Sensitization seminars, practical training in bargaining and dispute resolution and tripartite study tours (involving both trade union federations) to countries with well-functioning social dialogue and dispute resolution mechanisms, gave the social partners comparative references and helped solidify freedom of association and collective bargaining in Poland.

Significance of freedom of association to the end of the cold war

135. The political events in Central and Eastern Europe since the late 1980s are now a matter of history. Recognition of freedom of association and the right to collective bargaining in Poland gave impetus to a process of democratization that had far-reaching effects throughout the region. In March 1990, the Committee of Experts noted with satisfaction that trade union pluralism in the region was again possible both in law and in practice and welcomed the registration of Solidarity.

Lessons learned

136. The consequences of ILO action in Poland demonstrate that:

- First, even in the absence of political will, persistent attempts by the ILO to establish dialogue with the Government and to monitor its respect for fundamental principles and rights at work was decisive for the unblocking of the situation when the conditions became ripe.
- Second, the different components of the ILO supervisory mechanism served as an important forum for the Polish workers to bring international attention to their situation.
- Third, genuine democratization is not possible without accompanying measures for guaranteeing freedom of association; and inversely, realizing this right inevitably leads to more democratic systems of governance.
- Fourth, recommendations by the ILO can furnish the agenda for national processes.
- Fifth, external support for strengthening social dialogue following a political breakthrough is a key element in consolidating respect for freedom of association and collective bargaining.

The case of Costa Rica: Undermining representational security

137. While of less dramatic international resonance, the ILO has also been quick to respond to developments in respect of solidarist associations[8] in **Costa Rica** that are encroaching on freedom of association. Complaints against the proliferation of solidarist associations and the corresponding decrease of independent trade union organizations (in January 1987 there were 19 trade unions with 4,313

[8] These are associations dependent upon employers' contributions, including supervisors and managerial level staff among their members, which are often formed at the employer's initiative.

members in the industrial sector, while solidarist associations numbered 343 with a membership of 16,229), as well as the rise in anti-union discrimination, including the dismissal of a large number of union members, were first submitted to the Committee on Freedom of Association in 1988. The development of solidarist associations also resulted in a considerable decline in collective bargaining which was frequently replaced by a system of direct settlement.

Mutual cooperation in the search for solutions

138. The ILO undertook two missions to Costa Rica in April 1991 and October 1993 with a view to assessing the nature of these associations and to proposing appropriate measures to protect against any resulting infringements of trade union rights. Legislative reforms were adopted in 1993. This legislation was welcomed by the Committee of Experts which noted that, as concerned the recommendation that solidarist associations should not assume trade union functions or engage in collective bargaining, the legislation prohibited any activities hindering the formation and operation of trade unions, as well as the signing of collective agreements by solidarist associations.

ILO as reference

139. Furthermore, in a step towards greater representational security, the new legislation provided that any action or omission on the part of employers, workers or their respective organizations in breach of the standards laid down in ILO Conventions and ratified by the Legislative Assembly (including Convention No. 98 which prohibits anti-union discrimination and interference) constituted a punishable offence under the new legislation. In addition, guarantees in respect of employment security for trade union leaders and members were incorporated into the legislation. Unfortunately national machinery to enforce protection of trade union rights has been criticized for being inefficient and slow.

Elements of the issue remain

140. The Committee of Experts continues to monitor closely the developments in respect of solidarist associations and any preferential treatment granted to these associations which might hinder the free development of trade unions. In reply to a recent request for information concerning the question of inequality of treatment between solidarist associations and trade unions in regard to the management of compensation funds for dismissed workers, the Government indicated that a draft text had been elaborated on the Occupational Capitalization and Economic Democratization Fund permitting trade union organizations to manage such compensation funds – previously a right only granted to solidarist associations.

Lessons learned

141. The following lessons can be learned from ILO action in Costa Rica in the face of new forms of attack upon the fundamental principles of freedom of association:

- First, prompt and sustained reaction to evolving circumstances affecting representational security proved effective in addressing challenges posed.
- Second, the continual interaction between the various supervisory bodies, in particular the Committee on Freedom of Association and the Committee of Experts, permitted a more comprehensive approach to the problem and ensured the close monitoring of developments.
- Third, political will and national ownership assumed over the legislative reforms in 1993 meant that significant measures of protection against anti-union discrimination and acts of employer interference could be readily adopted.
- Fourth, ILO standards remain a reference point for adequate protection of freedom of association.

Some elements of assessment

Respect for civil liberties a precondition of progress

142. The above experiences highlight a number of elements concerning the effectiveness of ILO action to promote the realization of freedom of association and the effective recognition of the right to collective bargaining. A precondi-

tion for the effective exercise of freedom of association and collective bargaining is that basic ***civil liberties and human rights*** are respected. No matter what ILO assistance is given, no matter how strenuous the efforts, the chances of immediate success are limited when those rights are not guaranteed. The above examples show, however, that once the political will has emerged, the process of change can be remarkably fast.

Political will

143. The ILO Declaration Expert-Advisers urged that priority for technical cooperation should be given to countries that have openly recognized a problem they wish to solve. ***Political will*** (or lack thereof) on the part of governments can either rapidly facilitate or retard the realization and effective exercise of freedom of association and collective bargaining. This does not necessarily imply that the ILO should refrain from providing assistance when political will is not immediately forthcoming. The Organization can do much to create the *conditions* for these principles to be fully realized. As has been seen, ***ILO assistance and support provide important leverages*** for the agencies of voice within a country that are seeking to support processes of democratization.

Economic crises, democratic transition and change

144. Having noted that the ***realization of these rights and principles often goes hand in hand with democratic transition***, the ILO should focus its efforts on making the most of any windows of opportunity that may emerge. Countries coming out of conflict situations are in particular need of ILO assistance to stabilize social reforms and strengthen institutional capacities. It is essential that support for these transitions is sustained beyond the simple establishment of institutional frameworks and legislative reforms so that the interest and momentum created can be maintained and the progress consolidated.

Social dialogue smoothes the process of labour law reform

145. Social dialogue is often central to the effective realization of these principles and rights. In many countries, social dialogue has proved to be the most effective way of introducing and securing commitment to the legitimacy of labour law reform. Real and effective tripartite social dialogue can only take place when workers' and employers' organizations are not seen as adversaries, but as partners in the process. The fact that social dialogue is so central to the realization of these rights highlights the importance of both ***national tripartite ownership and active cooperation in the process*** when reforms are needed, and the need for ***effective labour institutions*** to prevent and resolve disputes.

Involving a broader constituency in change

146. Social dialogue can include a broader constituency and, thus, promote wider support for reform. In **Indonesia**, the process of labour law reform initiated included *tripartite-plus* workshops (including broader participation by institutions in civil society and various ministries) held by the Government on the draft legislation and the establishment of a tripartite drafting group to finalize the revised labour legislation. The ILO assisted in this process and there can be little doubt that its tripartite-plus nature helped broaden support for the realization of the principles of freedom of association and collective bargaining in that country.[9]

Cooperation with other international organizations

147. **Closer cooperation with international financial institutions** and other international organizations lends support to the ILO's efforts for the effective recognition of fundamental principles and rights at work (box 3.8). Coordinated and, if possible, joint action in country programmes avoids contradictions and helps to place the realization of these rights in the context of recovery programmes and broader developmental objectives. These can provide important leverages for the respect of these rights.

[9] ILO: *Demystifying the core Conventions of the ILO through social dialogue: The Indonesian experience* (Jakarta, 1999).

Box 3.8
Cooperation with other organizations: A few examples

The ILO Declaration calls on the Office to encourage other organizations with which it has established relations to support ILO efforts in relation to fundamental principles and rights at work (paragraph 3). Cooperation with other organizations takes many forms.

For instance, when the Director-General addressed UNCTAD X (Bangkok, February 2000), he stressed respect for freedom of association and collective bargaining as an integral part of decent work in a globalized economy. The ILO also made an input on the ILO Declaration and the fundamental Conventions to UNCTAD's *World Investment Report*, 1999 (see pp. 285 and 353).

In the **Republic of Korea**, collaboration between the ILO and the Organization for Economic Co-operation and Development (OECD) led the latter's Employment, Labour and Social Affairs Committee (ELSAC) to decide that the OECD should continue to monitor progress made on labour law reforms in the field of freedom of association in the Republic of Korea, at least until respect for basic freedom of association principles had been achieved in law and in practice.

Yet another type of cooperation is illustrated by the agreement concluded by the ILO and the Inter-Parliamentary Union, which refers specifically to promotion of the principles and rights in the Declaration.

Ratification

148. Some of the examples cited in this chapter show that member States **do not necessarily have to wait until all provisions of their labour legislation and practice are in conformity with the relevant Conventions** before considering ratification. What they need to consider in connection with ratification is the process of implementation. The lapse of time between the formal act of ratification and the initiation of dialogue concerning implementation gives time to take stock of the situation and permits the ILO and others to provide assistance and technical cooperation. What is important is that such a process is underpinned by tripartite cooperation in the country concerned.

Box 3.9
Commitment to core principles and rights: Indonesia and the ILO

Indonesia signed a Letter of Intent on 23 December 1998 with the ILO in which the Government reaffirmed its commitment to ratify the remaining three core Conventions and set up a tripartite Indonesian task force to Follow-up on the agreement, together with the ILO.[10] It was also agreed that the ILO would provide technical assistance for the ratification and implementation of these Conventions. Subsequently, the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Minimum Age Convention, 1973 (No. 138), were ratified on 7 June 1999. In March 2000, Indonesia also became the first Asian country to ratify the Worst Forms of Child Labour Convention, 1999 (No. 182).

The right mix of proactive and reactive responses

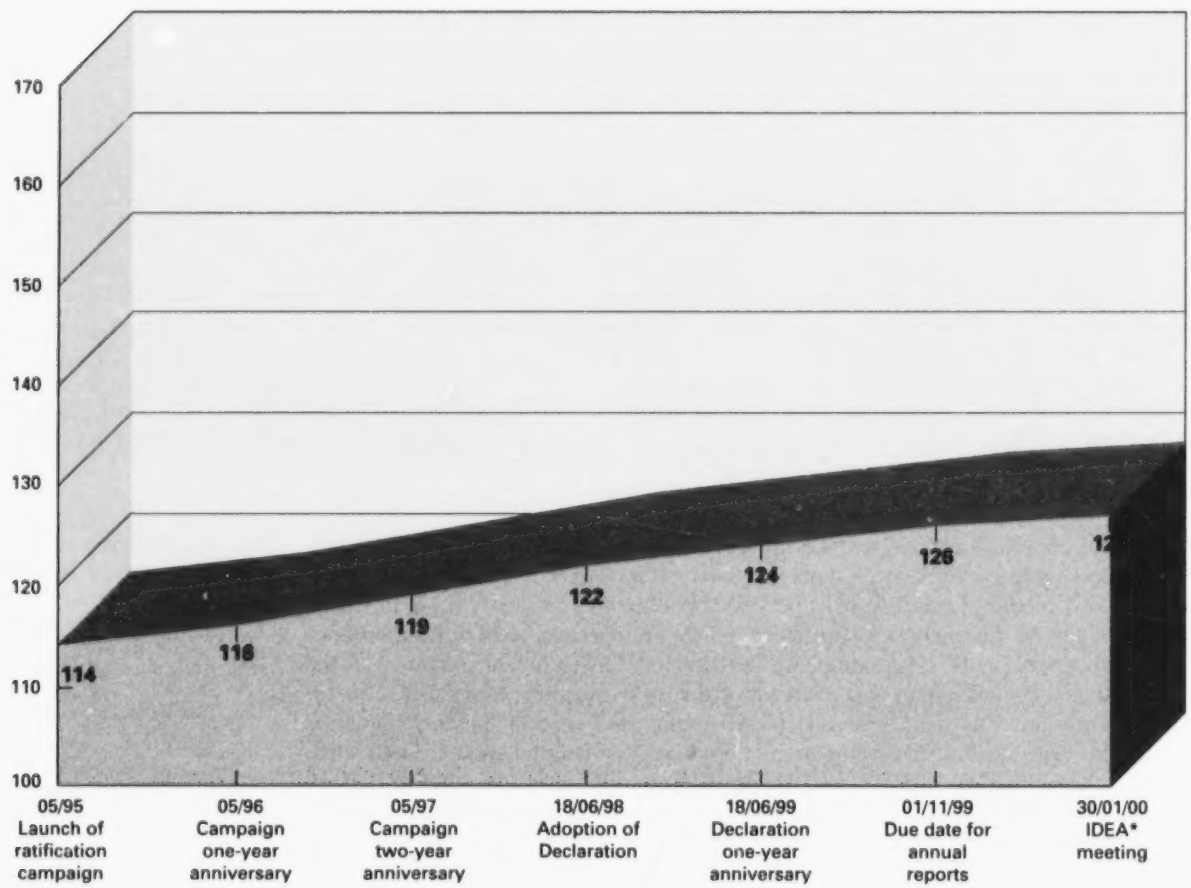
149. The impetus for change can result from annual reporting under the Declaration Follow-up, tripartite consultations, constitutional procedures, complaints, observations and recommendations of supervisory bodies, etc. Seminars have also been useful as part of the process, often facilitated by the conclusions of the supervisory bodies. There may also be spontaneous requests for ILO technical assistance, at the initiative of the government concerned or of the social partners. Obviously more in-depth promotion has to go beyond legislative action. Full respect for these principles and rights does not occur overnight. It is often an incremental process, with some progress being made – short of solving all problems. This illustrates the fact that ***no single solution*** is valid for all situations and emphasizes the ***complementary nature*** of the various types of ILO action, traditional supervisory work by ILO organs and more promotional activities, as in the context of the Declaration Follow-up.

[10] ibid., p. 81.

Voluntary and promotional nature of ILO mechanisms

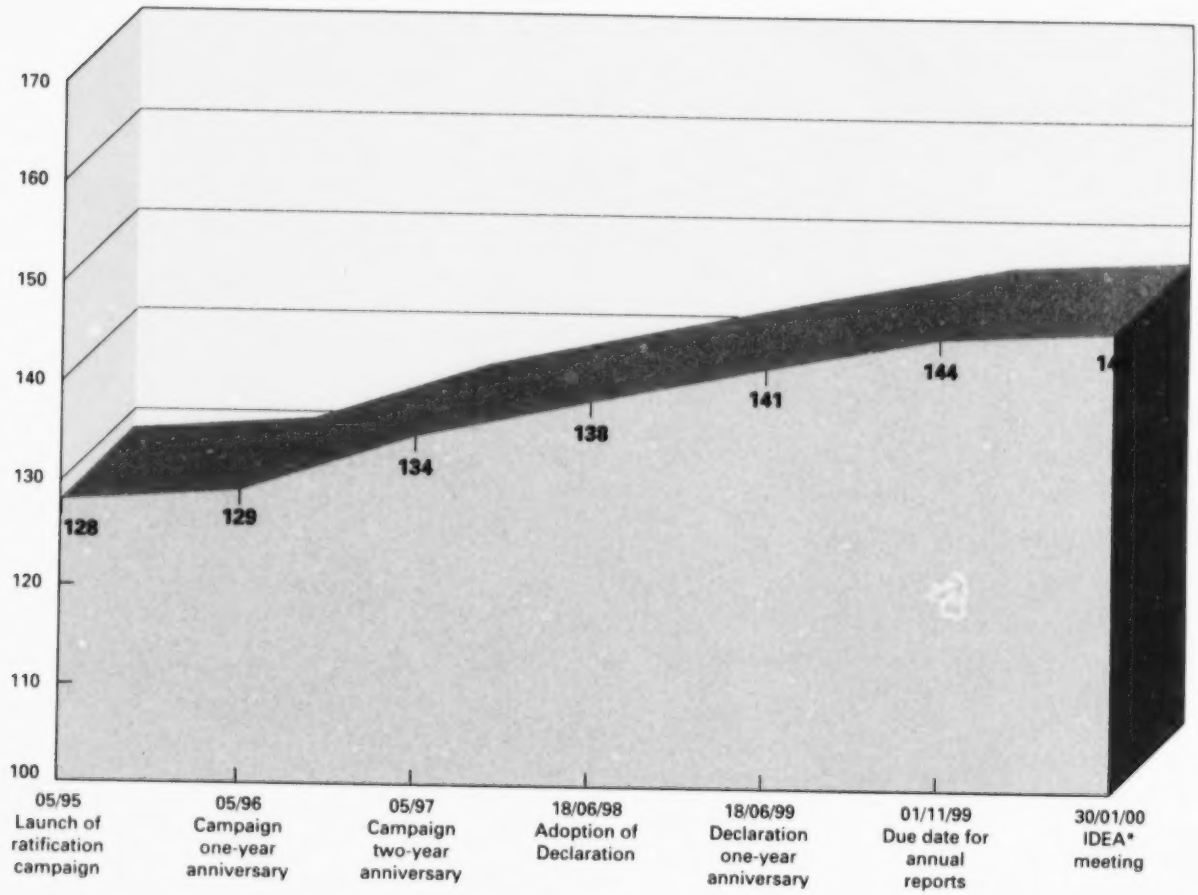
150. Given the debate over the value of mechanisms that promote core labour standards worldwide versus enforcing these through trade related measures, it is appropriate to highlight the voluntary, persuasive and promotional nature of the ILO system and the results achieved. The ILO supervisory system helps ensure adherence to obligations voluntarily acquired through a process of ratification of ILO fundamental Conventions. The Director-General launched a ratification campaign for the ILO's fundamental Conventions on 1 May 1995. By 31 January 2000, 14 additional States had ratified Convention No. 87 and 17 additional States had ratified No. 98 (see figures 3.1 and 3.2). Momentum for the universal ratification of these Conventions has been growing. By 31 January 2000, out of the then 174 ILO member States, 127 countries had ratified Convention No. 87 (73 per cent) and 145 had ratified Convention No. 98 (83 per cent). By 31 March 2000, one more country had ratified Conventions Nos. 87 and 98 (*Eritrea*), and *Kiribati* had become the 175th ILO member State.

Figure 3.1. Progress in ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)



*ILO Declaration Expert-Advisers

Figure 3.2. Progress in ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)



*ILO Declaration Expert-Advisers

The Declaration: A new tool for change

Joint action with member States

151. The Declaration and its Follow-up provides the ILO with a new promotional tool for the universal realization of fundamental principles and rights at work. The moral underpinning of this commitment means that the ILO constituents carry collective responsibility for this task. Building on the mechanisms already established, the Declaration serves as a new and complementary tool for ensuring the full realization of freedom of association and collective bargaining rights in all countries – including some of the most populated countries in the world that have not yet ratified Convention Nos. 87 and 98. The Follow-up to the Declaration – both the annual review and the Global Report (see Annex 2) – provide a unique opportunity to reinforce ILO action to safeguard and *promote* respect for basic principles and rights at work.[11]

[11] Paragraph 5 of the ILO Declaration "stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its Follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its Follow-up".

Part III: Determining priorities for technical cooperation

4. Building on the Declaration

Introduction

Determining priorities for the coming four years

152. The previous chapter reviewed the effectiveness of past ILO activities to promote freedom of association and the effective recognition of the right to collective bargaining. The Annex to the Declaration states that this Report should serve as a basis for determining priorities for the coming four years, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out. It likewise makes clear that it is for the Governing Body to draw conclusions from the Conference discussion of this Report on such priorities and plans of action. This chapter raises some of the issues that the Conference and the Governing Body may wish to address when undertaking that task.

International consensus emerges on fundamental principles and rights at work

153. The Declaration on Fundamental Principles and Rights at Work confirms the international consensus around a social pillar to the global economy and presents the ILO with new opportunities. But what are the implications for the ILO's operational activities aimed at its promotion? There would seem to be four avenues to reflect upon:

- The Declaration boosts political commitment to the realization of the principles and rights it covers.
- The Declaration provides the basis for a much fuller, and potentially universal, information base in respect of those principles and rights.
- The Declaration offers new opportunities for the ILO to mobilize resources to promote the realization of those principles and rights.
- The Declaration promotional Follow-up provides for important new forums for discussion, at both the Conference and the Governing Body, and a new opportunity to strengthen the tripartism on which the Organization is based.

Advocacy, knowledge and service

154. Promotion of the Declaration will need to be pursued on several fronts. The Declaration Follow-up and ILO supervisory procedures are distinct and complementary tools that reinforce one another. Certain action by the Organization needs to continue much as it has done before. This concerns the follow-up of recommendations made by the supervisory bodies, through legislative advice and assistance, drawing on the strength of a tripartite approach. The Declaration lends added weight to this work, and its Follow-up – particularly the annual reports – offers an additional channel to match established needs with

assistance. Yet achieving technical cooperation which goes beyond the legislative framework calls for a new approach to the promotion of fundamental principles and rights at work. This would appear well suited to the strategic programme and budget now directing the activities of the Organization which structures work along the lines of advocacy, knowledge and service.

Making the case, winning the arguments: Advocacy

Need to build support for exercise of freedom of association and the right to collective bargaining

155. This Report has highlighted the important role that advocacy plays in the promotion of freedom of association and collective bargaining. The status of freedom of association and collective bargaining as fundamental rights is less firmly established in the minds of policy-makers, public opinion and even the ILO's direct constituency, than is the case for the other three categories contained in the Declaration. The prospects for the full realization of this category of principles and rights will be immeasurably enhanced if the climate of opinion can be shifted in its favour. Meaningful tripartism can only find its full expression in the ILO when there are organizations representing employers and workers in all member States.

Advocating these principles and rights to a wider audience

156. This all suggests that the ILO should significantly extend the scope of its advocacy and outreach activities. Traditionally, these have been concentrated primarily on its own tripartite constituents. But there are many beyond that constituency who have considerable influence in the realization of the goals of the Declaration in respect of freedom of association and collective bargaining. In order to achieve better understanding of their importance and usefulness, actors beyond the ILO's customary circle have to be convinced and become engaged in the process.

Other partners in the international community

157. Paragraph 3 of the Declaration recognizes that the ILO should encourage other international organizations with which it has established relations to support its efforts to assist member States attain the objectives of the Declaration. It is important that the ILO continue to seek the active and committed support of all relevant international organizations and cooperates with them so that they can better recognize how the objectives of the Declaration positively contribute to their own mandates and goals.[1] Furthermore, it is central to the need for integrated thinking and action by the multilateral system in addressing the interdependent challenges raised by globalization.

Partnerships with civil society

158. Advocacy also needs to target those organizations of civil society that are themselves engaged in the promotion of other fundamental rights and the pursuit of social goals. The linkages between their objectives and those of the Declaration are generally insufficiently appreciated and understood. Much can be gained by making clear the complementarities and mobilizing wider support for the realization of freedom of association and collective bargaining.

Advocacy with other government departments

159. The ILO's interface with governments is generally through ministries of labour which, in many cases, have a good understanding of, and firm commitment to, fundamental principles and rights at work. But even when this is so, their views may not necessarily prevail when set against those of other parts of government. The ILO is reinforcing its efforts to strengthen ministries of labour and labour administration. But it also can improve the understanding of freedom of association and the practice of collective bargaining in other ministries, such as those covering trade, finance, development, planning, gender, education, agriculture and transport, as well as among parliamentarians, local authorities, the judiciary and in some cases even the armed forces and police.

[1] For recent progress, see Government Body docs. 277/ESP/4 and 277/WP/SDL/2.

Other initiatives to promote the Declaration

160. There are other new and encouraging initiatives already under way in relation to the Declaration. The Global Compact, discussed in Chapter 1, is a high profile vehicle for winning endorsement from enterprises for the principles and rights of the Declaration. The International Organization of Employers (IOE) has undertaken a campaign with its affiliates to win explicit backing for this initiative. Public institutions from the international to the community level can also engage in initiatives that reinforce freedom of association and collective bargaining rights. International financial institutions can give greater recognition to the contribution collective bargaining is able to make to balanced economic growth and enhanced employability of workers. Employers', workers' and non-governmental organizations can form strategic alliances to promote freedom of association for all.

Advocating these principles and rights among trade unions

161. It might be too readily concluded that there is little scope or need for the advocacy of freedom of association among trade unions. They are the primary victims of abuse in this field and the rights and principles concerned are crucial to their existence, their activities and their success. Yet some workers' organizations may draw direct benefit from restrictions placed on others, or even upon the free choice and freedom of action of their own members. Ignoring or considering such abuse may serve their own purposes, but not the principles of freedom of association. In such instances, activities can help promote acceptance of trade union pluralism as a necessary option in the exercise of freedom of association.

Extending organization and bargaining rights to vulnerable sectors

162. The ILO's ambition should be to effectively reach out to all those who wish to engage in a real process of assistance, starting with the most vulnerable groups (such as migrant and domestic workers). An obvious area to be targeted is the informal economy, the very nature of which poses major obstacles to collective representation, organization, and the establishment of bargaining relationships. Yet the principle of freedom of association is such a central element of basic civil liberties that it cannot be absent from the informal economy. An important challenge is to explore the ways in which it can effectively be applied to these realities.

Multiplier effects of joint action

163. ILO action should be the seeds from which government to government, employer to employer, trade union to trade union, and intra-civil society activities grow. The advantages lie not just in terms of quantity, but in the efficacy of peer group interaction and advocacy. This is contingent, for example, upon an employers' organization making the case for freedom of association to another recalcitrant sister organization. Trade unions that have emerged from monopoly situations can share their experiences with others in similar positions. Likewise, government to government pressure for the realization of these rights and principles can be very effective.

Political will and commitment required from the international community

164. The net of advocacy must be cast wide if it is to create favourable conditions for change in those member States where sufficient political will exists. Similarly it can bring to bear significant moral pressure in those cases where wilful and manifest abuse persists, by making it clear that such abuse is intolerable to the international community.

Signposts to priorities and action plans for advocacy

165. A few signposts point the way to where priorities and action plans may lie in respect of the need to advocate these principles and rights:

- **awareness-raising and outreach activities** explaining the benefits of these principles and rights targeted at a broader constituency than the direct tripartite constituents;
- **intensified exchange between the ILO and those who advise governments** on behalf of international and regional financial institutions to ensure that we do not work at cross-purposes;

- **awareness-raising activities among the ILO's own constituency** enabling them to promote the realization of these principles and rights in new constituencies.

Information for action

Expanding knowledge and information on respect for these principles and rights

166. The reporting procedures in the Follow-up to the Declaration provide an important new source of information on respect for freedom of association and collective bargaining rights. Even before the adoption of the Declaration, the Organization was well placed in this regard because complaints could be submitted to the Committee on Freedom of Association against non-ratifying governments, as well as ratifying member States. Existing supervisory mechanisms together with the reporting procedures under the Follow-up to the Declaration now provide the ILO with the potential to develop a baseline of respect for these principles and rights. Nevertheless a considerable margin for improvement remains. Ratifications do not tell the whole story. Restrictions on the exercise of these principles and rights may still exist in certain sectors of the economy. Furthermore, complaints are by their nature episodic and the information they generate sporadic. In addition, the ILO Declaration Expert-Advisers charged with reviewing the first set of annual reports under the Follow-up to the Declaration concluded that these reports fell short of providing a reliable baseline which would permit a global assessment of the state of freedom of association and collective bargaining in the world, and against which progress in their respect could be measured. One-third of the countries owing annual reports in relation to freedom of association and collective bargaining did not provide these (see figure 4.1). The Governing Body has determined that outreach efforts should be concentrated on countries still owing initial reports under the Declaration.[2]

Drawing on other sources of information

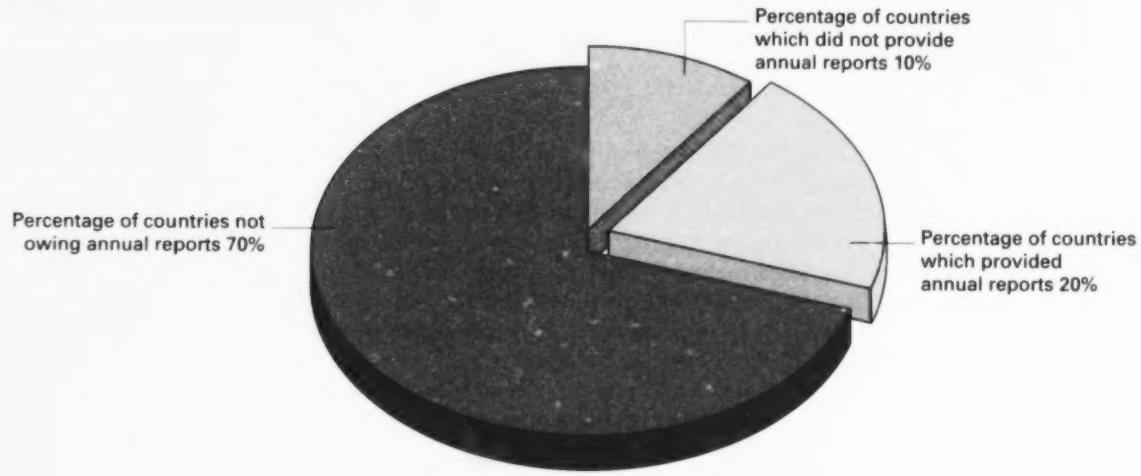
167. The ILO has other significant sources of information. Its presence in member States, through its multidisciplinary teams and other field structures, permits it insight and understanding of issues and situations which do not always result from formal reporting and supervisory systems. The information gathering process needs to be closely linked to the ILO's analytical and research agenda, so that knowledge gaps are closed at the same time as information gaps. There is still much that can be done to identify the determinants of success and best practice.

[2] As of 31 March 2000, the following countries had not supplied initial reports (concerning all categories of principles and rights at work) under the ILO Declaration Follow-up: Afghanistan, Antigua and Barbuda, Armenia, Barbados, Belize, Bosnia and Herzegovina, Burundi, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Ecuador, Equatorial Guinea, Fiji, Gabon, Grenada, Guinea, Haiti, Jamaica, Kazakhstan, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, The former Yugoslav Republic of Macedonia, Madagascar, Malawi, Moldova, Mongolia, Oman, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principle, Sierra Leone, Solomon Islands, Swaziland, Turkmenistan, Uzbekistan.

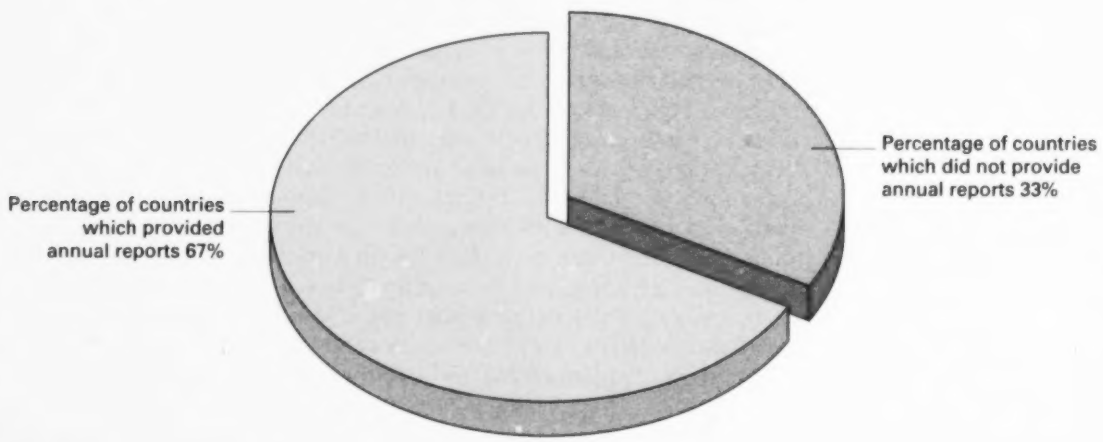
Figure 4.1. Ratification and Declaration reporting

	Number of ratifications before meeting of the ILO Declaration Expert-Advisers (30 January 2000)	Number of countries owing* annual reports under this category of fundamental principles and rights at work	Number of countries which provided annual reports	Number of countries which did not provide annual reports
Convention 87	127	52	35	17
Convention 98	145			

Ratification and Declaration reporting


Percentage of countries which did not provide annual reports 10%
Percentage of countries not owing annual reports 70%
Percentage of countries which provided annual reports 20%

Countries owing annual reports under the Follow-up to the Declaration


Percentage of countries which did not provide annual reports 33%
Percentage of countries which provided annual reports 67%

* Under the Follow-up to the Declaration, countries that owe annual reports are those which have not ratified one or more of the fundamental Conventions.

Signposts to priorities and action plans for knowledge

168. This Report has highlighted significant gaps in knowledge on the variables determining the realization of the rights and other economic and social goals:

- In establishing a baseline on respect for these principles and rights, **particular attention needs to be given to those non-ratifying member States which fail to submit annual reports**, as well as to eliciting better information from those that do.
- There must be an improved system of **statistics and indicators of progress** that assist the ILO to measure the extent to which all those at work have a voice and representational security.
- The link between these principles and rights and **equitable development and poverty reduction** needs to be better articulated.
- Further research should be conducted into the intervening variables that determine the link between **organization and collective bargaining rights, equity and improved economic performance**.
- There must be a better understanding of how freedom of association and collective bargaining strengthen the realization of the **other three categories of fundamental principles and rights at work**.

Service to the ILO constituency

Making the most of windows of opportunity

169. The Declaration explicitly recognizes the obligation incumbent upon the ILO to assist its Members to meet the commitments it contains by responding to their established and expressed needs. The Declaration Expert-Advisers have called on the international community to respond to appeals for assistance from member States who are ready and willing to promote the principles and rights of the Declaration. As the preceding chapters have shown, political will is a crucial factor for progress. This is obviously a major consideration, and the ILO will need to exercise judgement in determining the real potential for progress when requests are made of it. Opportunities for genuine breakthroughs often appear at times of significant economic and political change. In such situations, the ILO has to be able to react quickly and bring to bear the kind of assistance to sustain the momentum for change.

Building pressure to secure political will

170. What, however, is the appropriate stance when there is no evidence of political commitment or of prospects for progress? The Organization would be ill-advised to devote resources to activities which have no reasonable chance of success. But equally, it would fail in its responsibilities if it wrote off certain situations as being beyond hope, effectively designating them as "no-go areas" for principles and rights contained in the Declaration. The way forward may be through the choice of a judicious mix of action, in which advocacy would figure prominently. Political will is not an unalterable given, but rather a factor open to influence and persuasion. Nor should the ILO and its constituents be reticent in expressing disapproval and pressing for change when confronted with cases of serious and flagrant abuse. There can be a place for the personal intervention of the Director-General in such cases in seeking immediate remedies in situations of particular urgency. None of this detracts from the promotional nature of the Declaration. Indeed the credibility of its follow-up depends upon the capacity of the Organization to act with understanding and resolution when circumstances require.

Identifying priorities

171. In addition to the parameters defined by ratification and political will, the ILO may consider that there are certain categories of failure to respect the principles and rights of freedom and association that require priority attention. One is clearly the gravity of abuse, as for example when life and liberty is at stake. But it may also prove possible to identify certain regions, categories of workers or types of obstacles which particularly call for attention, or where the prospects for progress appear particularly favourable.

Mobilizing other resources

172. The Declaration provides that the ILO should make the mobilization of external resources and support an integral part of its assistance to constituents. There are positive indications concerning donor interest in financing work to promote the Declaration. As in other areas of technical cooperation, the ILO and donors will need to keep in mind the overall coherence of the ILO's strategy of promotion of fundamental principles and rights when agreeing upon the types of activity to be funded. These questions have already been the subject of detailed discussion in the Conference and the Governing Body.

A winning formula

173. The cases used as examples in Chapter 3 are evidence that each national situation is unique, and that prefabricated or stereotyped action plans at the country level are unlikely to address adequately the specificities of each. While this Report cannot outline the substantive content of action to be taken, past experience has shown that a combination of political commitment, well-targeted technical cooperation and vibrant interaction and dialogue among the social partners is a successful formula for the realization of fundamental principles and rights at work in each particular context.

Social dialogue

174. Of particular importance is the role of social dialogue. The commitment of each of the three national constituent groups is fundamental to the success of any national process. And mechanisms of social dialogue are equally key in enabling them to contribute and interact effectively. Nor is social dialogue conducted in a vacuum. If the objective of fuller respect for freedom of association and collective bargaining enjoys wide support in political circles and from public opinion, then the greater will be the chances for success. The creation of such a supportive environment is contingent upon the success of advocacy work and the extent to which these goals are perceived as positive for wider economic and social policy objectives. Functional social dialogue can be underpinned by activities which strengthen the representational capacities of the partners, and which consolidate the different types of labour market institutions providing mechanisms for conflict resolution. It is equally true that these mechanisms and institutions offer a supportive environment to sustain the exercise of freedom of association and collective bargaining, once ILO promotional work has ended.

Ownership of the process

175. Closely linked to the above is the significance of national ownership. Actions which, for whatever reason, are perceived to respond to external initiative or pressure are less likely to succeed than are those which are clearly seen as responding to domestic interests and concerns and as being driven by national actors. Technical cooperation and advisory services should support national actors and national decision-making processes. National ownership is also at the heart of the strategies of other international organizations, notably those of the World Bank and the International Monetary Fund concerning poverty reduction, and this provides improved opportunities for integrating ILO action in favour of freedom of association and collective bargaining with wider internationally backed economic and social policy frameworks.

Deciding where to concentrate activities

176. The utility of ILO assistance to constituents at other than the country level may merit further consideration. In the initial stages, at least, subregional and regional level activities may be efficient in familiarizing constituents with the Declaration and promoting their active participation in its Follow-up. These approaches may be particularly suited to situations in which regional organizations are active and influential in processes of cooperation and integration.[3] But it would otherwise seem probable that most action plans should be operated at the national and sometimes the sectoral levels.

Signposts to priorities and action plans

177. A few signposts point the way to where the priorities and action plans for technical cooperation may lie:

- strengthening the **capacity of the constituents** to give effect to the principles and rights of freedom of association and collective bargaining;
- **focusing on certain sectors** where fundamental principles and rights are poorly observed;
- **identifying the areas where the barriers to women's organization are highest** and ways of overcoming them, including through increased appreciation of gender issues in collective bargaining;
- improving the **capacity of constituents to prevent, manage and resolve conflict**.

Conclusion

Ensuring the realization of freedom of association and collective bargaining among the ILO constituency

178. Significant progress has been made in the acceptance and realization of the principles of freedom of association and the right to collective bargaining. However, there are still far too many people for whom this method of improving their position in life remains unattainable or elusive. Three interrelated priorities, highlighted in the preceding chapters should guide promotional work by the ILO with its constituents and with the rest of the world:

- Ensuring that all workers can form and join a trade union of their choice without fear of intimidation or reprisal and that employers are free to form and join independent associations;
- Encouraging an open and constructive attitude by private business and public employers to the freely chosen representation of workers and the development of agreed methods of bargaining and complementary forms of cooperation concerning terms and conditions of work;
- Promoting the recognition by public authorities that the good governance of the labour market, based on respect for fundamental principles and rights at work, makes a major contribution to stable economic, political and social development in the context of international economic integration, the expansion of democracy and the fight against poverty.

Freedom of association, collective bargaining and decent work

179. Respect for the basic human rights of freedom of association and collective bargaining is indispensable in the context of international economic integration and the enlargement of democracy worldwide. The existence of independent, representative employers' and workers' organizations depends upon respect for these principles and rights, and their realization is critical to ensure local responses to the differential impact that globalization is having on the lives of working women and men all over the world. At the same time, the universal commitment to respect, promote and realize the principles and rights in the Declaration provides a critical social dimension to the global economy and its governance. Their universal respect by all member States is critical to the decent work agenda of the ILO. The ILO Declaration Follow-up sets the stage for encouraging member States' efforts to achieve this goal.

[1] In this regard, the recommendations of the ILO Declaration Expert-Advisers, adopted by the 277th (March 2000) Session of the Governing Body, requested the ILO to: "Review examples of regional integration groups that are making strides in promoting fundamental principles and rights at work, and disseminate information on the lessons that can be drawn from these experiences". See ILO: *Review of annual reports*, op. cit., Part I, Governing Body doc. 277/3/1, para. 22, p. 7.

Annexes

Annex 1

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

   (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

   (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

   (a) freedom of association and the effective recognition of the right to collective bargaining;

   (b) the elimination of all forms of forced or compulsory labour;

   (c) the effective abolition of child labour; and

   (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

   (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

   (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of those Conventions; and

   (c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional Follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its Follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its Follow-up.

Annex

Follow-up to the Declaration

I. OVERALL PURPOSE

1. The aim of the Follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this Follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. ANNUAL FOLLOW-UP CONCERNING NON-RATIFIED FUNDAMENTAL CONVENTIONS

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth

discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.

4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. GLOBAL REPORT

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. IT IS UNDERSTOOD THAT:

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

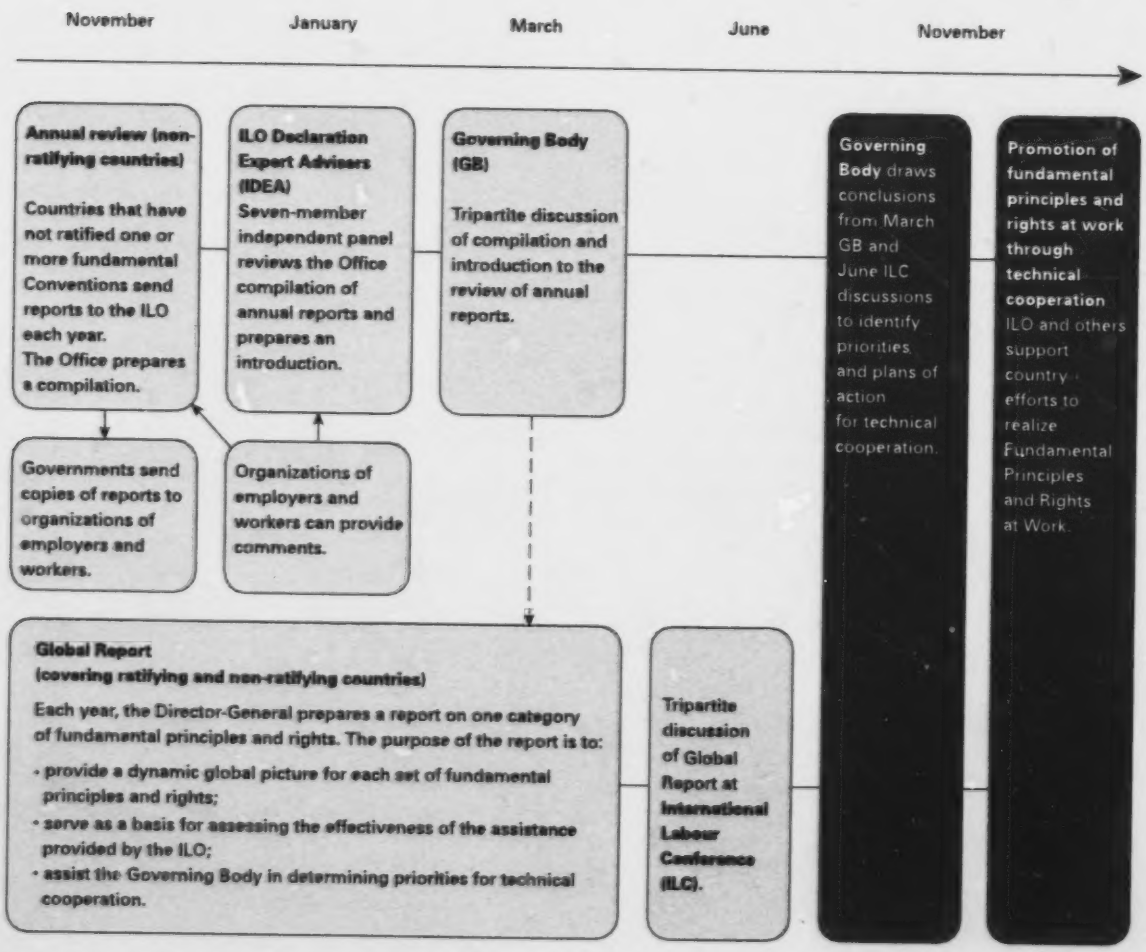
The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998.

IN FAITH WHEREOF we have appended our signatures this nineteenth day of June 1998.

The President of the Conference,
JEAN-JACQUES OESCHSLIN
The Director-General of the International Labour Office,
MICHEL HANSENNE

Annex 2

Follow-up to the Declaration
Encouraging efforts to respect fundamental principles and rights at work


November
January
March
June
November
Annual review (non-ratifying countries)
Countries that have not ratified one or more fundamental Conventions send reports to the ILO each year.
The Office prepares a compilation.
ILO Declaration Expert Advisers (IDEA)
Seven-member independent panel reviews the Office compilation of annual reports and prepares an introduction.
Governing Body (GB)
Tripartite discussion of compilation and introduction to the review of annual reports.
Governing Body draws conclusions from March GB and June ILC discussions to identify priorities and plans of action for technical cooperation.
Promotion of fundamental principles and rights at work through technical cooperation
ILO and others support country efforts to realize Fundamental Principles and Rights at Work.
Governments send copies of reports to organizations of employers and workers.
Organizations of employers and workers can provide comments.
Global Report
(covering ratifying and non-ratifying countries)
Each year, the Director-General prepares a report on one category of fundamental principles and rights. The purpose of the report is to:
• provide a dynamic global picture for each set of fundamental principles and rights;
• serve as a basis for assessing the effectiveness of the assistance provided by the ILO;
• assist the Governing Body in determining priorities for technical cooperation.
Tripartite discussion of Global Report at International Labour Conference (ILC).

Annex 3

Table of ratifications of ILO Conventions Nos. 87 and 98 and annual reports submitted under the Declaration follow-up

(as at 31 January 2000)

No. 87 – Freedom of Association and Protection of the Right to Organise Convention, 1948

No. 98 – The Right to Organise and Collective Bargaining Convention, 1949

Explanation of symbols in the table

R Convention ratified

– Convention not ratified

yes Annual report received

no Annual report not received

n/a Not applicable

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Afghanistan	—	—	no	no
Albania	R	R	n/a	n/a
Algeria	R	R	n/a	n/a
Angola	—	R	yes	n/a

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Antigua and Barbuda	R	R	n/a	n/a
Argentina	R	R	n/a	n/a
Armenia	—	—	no	no
Australia	R	R	n/a	n/a
Austria	R	R	n/a	n/a
Azerbaijan	R	R	n/a	n/a
Bahamas	—	R	yes	n/a
Bahrain	—	—	yes	yes
Bangladesh	R	R	n/a	n/a
Barbados	R	R	n/a	n/a
Belarus	R	R	n/a	n/a
Belgium	R	R	n/a	n/a
Belize	R	R	n/a	n/a
Benin	R	R	n/a	n/a
Bolivia	R	R	n/a	n/a
Bosnia and Herzegovina	R	R	n/a	n/a
Botswana	R	R	n/a	n/a
Brazil	—	R	yes	n/a
Bulgaria	R	R	n/a	n/a
Burkina Faso	R	R	n/a	n/a
Burundi	R	R	n/a	n/a
Cambodia	R	R	n/a	n/a
Cameroon	R	R	n/a	n/a
Canada	R	—	n/a	yes
Cape Verde	R	R	n/a	n/a
Central African Republic	R	R	n/a	n/a
Chad	R	R	n/a	n/a
Chile	R	R	n/a	n/a
China	—	—	yes	yes

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Colombia	R	R	n/a	n/a
Comoros	R	R	n/a	n/a
Congo	R	R	n/a	n/a
Costa Rica	R	R	n/a	n/a
Côte d'Ivoire	R	R	n/a	n/a
Croatia	R	R	n/a	n/a
Cuba	R	R	n/a	n/a
Cyprus	R	R	n/a	n/a
Czech Republic	R	R	n/a	n/a
Democratic Republic of the Congo	—	R	yes	n/a
Denmark	R	R	n/a	n/a
Djibouti	R	R	n/a	n/a
Dominica	R	R	n/a	n/a
Dominican Republic	R	R	n/a	n/a
Ecuador	R	R	n/a	n/a
Egypt	R	R	n/a	n/a
El Salvador	—	—	yes	yes
Equatorial Guinea	—	—	no	no
Eritrea	—	—	yes	yes
Estonia	R	R	n/a	n/a
Ethiopia	R	R	n/a	n/a
Fiji	—	R	no	n/a
Finland	R	R	n/a	n/a
France	R	R	n/a	n/a
Gabon	R	R	n/a	n/a
Gambia	—	—	yes	yes
Georgia	R	R	n/a	n/a
Germany	R	R	n/a	n/a

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Ghana	R	R	n/a	n/a
Greece	R	R	n/a	n/a
Grenada	R	R	n/a	n/a
Guatemala	R	R	n/a	n/a
Guinea	R	R	n/a	n/a
Guinea-Bissau	—	R	yes	n/a
Guyana	R	R	n/a	n/a
Haiti	R	R	n/a	n/a
Honduras	R	R	n/a	n/a
Hungary	R	R	n/a	n/a
Iceland	R	R	n/a	n/a
India	—	—	yes	yes
Indonesia	R	R	n/a	n/a
Iran, Islamic Republic of	—	—	yes	yes
Iraq	—	R	no	n/a
Ireland	R	R	n/a	n/a
Israel	R	R	n/a	n/a
Italy	R	R	n/a	n/a
Jamaica	R	R	n/a	n/a
Japan	R	R	n/a	n/a
Jordan	—	R	yes	n/a
Kazakhstan	—	—	no	no
Kenya	—	R	yes	n/a
Korea, Republic of	—	—	yes	yes
Kuwait	R	—	n/a	yes
Kyrgyzstan	R	R	n/a	n/a
Lao People's Democratic Republic	—	—	no	no
Latvia	R	R	n/a	n/a
Lebanon	—	R	yes	n/a

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Lesotho	R	R	n/a	n/a
Liberia	R	R	n/a	n/a
Libyan Arab Jamahiriya	—	R	no	n/a
Lithuania	R	R	n/a	n/a
Luxembourg	R	R	n/a	n/a
Madagascar	R	R	n/a	n/a
Malawi	R	R	n/a	n/a
Malaysia	—	R	yes	n/a
Mali	R	R	n/a	n/a
Malta	R	R	n/a	n/a
Mauritania	R	—	n/a	yes
Mauritius	—	R	yes	n/a
Mexico	R	—	n/a	yes
Moldova, Republic of	R	R	n/a	n/a
Mongolia	R	R	n/a	n/a
Morocco	—	R	yes	n/a
Mozambique	R	R	n/a	n/a
Myanmar	R	—	n/a	no
Namibia	R	R	n/a	n/a
Nepal	—	R	yes	n/a
Netherlands	R	R	n/a	n/a
New Zealand	—	—	yes	yes
Nicaragua	R	R	n/a	n/a
Niger	R	R	n/a	n/a
Nigeria	R	R	n/a	n/a
Norway	R	R	n/a	n/a
Oman	—	—	no	no
Pakistan	R	R	n/a	n/a
Panama	R	R	n/a	n/a

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Papua New Guinea	—	R	no	n/a
Paraguay	R	R	n/a	n/a
Peru	R	R	n/a	n/a
Philippines	R	R	n/a	n/a
Poland	R	R	n/a	n/a
Portugal	R	R	n/a	n/a
Qatar	—	—	yes	yes
Romania	R	R	n/a	n/a
Russian Federation	R	R	n/a	n/a
Rwanda	R	R	n/a	n/a
Saint Kitts and Nevis	—	—	no	no
Saint Lucia	R	R	n/a	n/a
Saint Vincent and the Grenadines	—	R	no	n/a
San Marino	R	R	n/a	n/a
Sao Tome and Principe	R	R	n/a	n/a
Saudi Arabia	—	—	yes	yes
Senegal	R	R	n/a	n/a
Seychelles	R	R	n/a	n/a
Sierra Leone	R	R	n/a	n/a
Singapore	—	R	yes	n/a
Slovakia	R	R	n/a	n/a
Slovenia	R	R	n/a	n/a
Solomon Islands	—	—	no	no
Somalia	—	—	no	no
South Africa	R	R	n/a	n/a
Spain	R	R	n/a	n/a
Sri Lanka	R	R	n/a	n/a
Sudan	—	R	no	n/a
Suriname	R	R	n/a	n/a

Member States	Ratifications		Annual report submitted	
	C. 87	C. 98	C. 87	C. 98
Swaziland	R	R	n/a	n/a
Sweden	R	R	n/a	n/a
Switzerland	R	R	n/a	n/a
Syrian Arab Republic	R	R	n/a	n/a
Tajikistan	R	R	n/a	n/a
Tanzania, United Republic of	—	R	yes	n/a
Thailand	—	—	yes	yes
The former Yugoslav Republic of Macedonia	R	R	n/a	n/a
Togo	R	R	n/a	n/a
Trinidad and Tobago	R	R	n/a	n/a
Tunisia	R	R	n/a	n/a
Turkey	R	R	n/a	n/a
Turkmenistan	R	R	n/a	n/a
Uganda	—	R	yes	n/a
Ukraine	R	R	n/a	n/a
United Kingdom	R	R	n/a	n/a
United Arab Emirates	—	—	yes	yes
United States	—	—	yes	yes
Uruguay	R	R	n/a	n/a
Uzbekistan	—	R	no	n/a
Venezuela	R	R	n/a	n/a
Viet Nam	—	—	yes	yes
Yemen	R	R	n/a	n/a
Yugoslavia[1]	R	R	n/a	n/a
Zambia	R	R	n/a	n/a
Zimbabwe	—	R	yes	n/a

[1] This concerns the former Socialist Federal Republic of Yugoslavia since, pursuant to decisions taken by the Governing Body in line with the respective United Nations resolutions, no State is recognized as the continuation of this Member.

Annex 4

Conventions Nos. 87 and 98

Convention No. 87

CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE *

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948,

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session,

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace,

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress",

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation,

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions,

* This Convention came into force on 4 July 1950.

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

Part I. Freedom of association

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Part II. Protection of the right to organise

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

[Miscellaneous and final provisions omitted]

Convention No. 98

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively *

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to –

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

* This Convention came into force on 18 July 1951.

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

[Final provisions omitted]